SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 390

ROOSEVELT WARD, JR., PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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1 [Caption omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS DIVISION

No. 24,057—Criminal

UNITED STATES OF AMERICA

v.

ROOSEVELT WARD, JR.

* * * * * * * * * * *

2 **Indictment for Violation of the Selective Service Act of 1948—Filed June 19, 1951**

The grand jury charges:

Count 1. That on the 23d day of April, 1951, in the Eastern District of Louisiana, ROOSEVELT WARD, JR., a registrant of Selective Service Local Board No. 45, in and for the Parish of Orleans, State of Louisiana, did unlawfully and knowingly fail to comply with an order to report for induction, issued by said local board on March 26, 1951, as required by law.

Count 2. That between the dates of March 30, 1951 and May 31, 1951, ROOSEVELT WARD, JR., a registrant of Selective Service Local Board No. 45, in and for the Parish of Orleans, State of Louisiana, did unlawfully and knowingly fail to furnish said local board his correct address where United States mail might be delivered to him, as required by law. A TRUE BILL

(Sgd) WM. B. JONES
Foreman

(Sgd) JOHN N. MCKAY
United States Attorney

A TRUE BILL
New Orleans, La., Jun 19, 1951
(Sgd) WM. B. JONES
Foreman.

3 IN UNITED STATES DISTRICT COURT

Minute Entry—Arraignment and Plea of Not Guilty—August 8th, 1951

WRIGHT, *J:*

* * * * * * * * * * * *

Defendant through his counsel record, having been read the indictment, entered a plea of "NOT GUILTY" to violation of Title 50, Section 462, (Selective Service Act). Trial set for September 10th, 1951 at 10:00 o'clock A.M.

IN UNITED STATES DISTRICT COURT

Minute Entry—Case Called, Jury Sworn, Hearing and Verdict —September 10th, 1951

WRIGHT, *J:*

This cause was this day called for trial:

* * * * * * * * * * * *

4 The following named jurors were called, sworn on the voir dire and being acceptable, were sworn to try the issue joined herein:

1. Mrs. Lucille Babers
2. Marks L. Isaacks
3. Mrs. Bernadine Vankuren
4. Mrs. Annie C. Valley
5. Thomas Tate
6. Charles J. Tackaberry
7. Miss Dorothy Randall
8. Edwin R. Ranson
9. Miss Odette Bagur
10. Edmond W. Ullrich
11. Miss Marguerite Kehlor
12. Hamilton C. Jais

the balance of said jurors were excused subject to call.

Counsel for the United States moved the Court for a separation of witnesses, and the Court granted same, and all witnesses summoned herein were called, sworn, instructed by the Court and retired from the courtroom.

Counsel for the respective parties each made an opening statement.

The following named witnesses, previously sworn, were called to testify on behalf of the United States:

AUGUST A. CHRESTIA,
ANTHONY J. MALONEY,

and, after hearing the oral testimony, and documentary proof offered and filed, counsel for the United States rested its case in chief.

Roosevelt Ward, Jr., the defendant, was called, sworn by the Deputy Clerk, and offered oral and documentary evidence in his

own behalf, after which, counsel for the United States moved
5 the Court to enter a nolle prosequi as to Count 1 of the indictment and elected to proceed with Count 2, which motion was granted, and there being no further evidence or testimony offered, counsel for both parties announced that they would rest.

Counsel for the defendant then moved the Court to instruct the jury to disregard all evidence relating to failure of the defendant to notify the board of his change of address, etc., and the Court denied same. Counsel then moved the Court for a directed verdict of acquittal, for the reasons orally assigned, and the Court overruled same.

After hearing arguments of counsel, and receiving a charge from the Court, the jury retired to deliberate upon their verdict. After deliberation the jury returned into Court and requested further instruction. Having received a further charge, the jury again retired to deliberate and returned into open Court, and then and there, through their foreman, did render and deliver the following verdict, to-wit:

"We the jury find the defendant Guilty as charged.

(Sgd) E. R. RANSON,
Foreman
Sept. 10, 1951."

Counsel for the defendant then moved the Court that the jury be polled, and each of said jurors having been called individually and interrogated by the deputy clerk, announced that the verdict
6 rendered was their true verdict in the premises, and the Court ordered that the verdict be recorded, and the jury discharged subject to call.

Counsel for defendant then announced his intention of an appeal, and on motion of counsel for the United States, it was ordered that pending such appeal, defendant be enlarged on bail in the sum of $20,000.00, and in default thereof, defendant be remanded to the custody of the United States Marshal.

IN UNITED STATES DISTRICT COURT

Motion of Defendant for Judgment of Acquittal—Filed September 10, 1951

Comes now the Defendant and respectfully moves the court for judgment of acquittal upon the second count of the indictment and for ground of such motion says, that it charges that he did "fail to furnish said local board his correct address where United States mail might be delivered to him"; whereas under the regulations as proven, having the force of law he was only required to "keep his

local board advised at all times of the address where mail will reach him."

And for further ground of such motion he says, that it affirmatively appears from the evidence that he did furnish said local board with "his correct address where United States mail might be delivered to him", and the fact that such mail which so might have been delivered to him, was not so sent and handled
7 that it was actually delivered, is an act and default of the agents of the government of the United States, and not an act and default of this defendant wherefor he can be held criminally responsible.

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE,
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

Defendant's Requested Charges

(1) The Court charges you that it is charged against the Defendant in the first count that he did "knowingly fail to comply with an order to report for induction", and before this charge can be said to be proven, you must find from the evidence beyond a reasonable doubt that the Defendant knew that an order for his induction had been issued, and so knowing, did fail to comply therewith.

(2) The Court charges you that under the second count it is charged that the Defendant did unlawfully and knowingly fail to furnish his local Board with his correct address where United States mail might be delivered to him; and if you find from the evidence that the Defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he is not guilty, and you must find a verdict of acquittal.

(3) The Court charges you that Subsection (b) of Sec.
8 1642.41 of the Selective Service Regulations in force at the time of the events charged in the indictment provided as follows:

> "In endeavoring to locate and to secure the compliants of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Card (or other person likely to know his whereabouts."

and in determining whether or not Defendant in good faith furnished or failed to furnish his Local Board with his address where United States mail might be delivered to him, you may take into consideration these provisions of the regulations and the practice of communicating with a registrant through his employer therein directed.

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE
Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

Judgment and Commitment—Filed September 10, 1951

On this 10th day of September, 1951, came the United States Attorney, and the defendant Roosevelt Ward, Jr., appearing in proper person, and by counsel, Alvin B. Jones and John M. Coe, Esquires, and,

The defendant having been convicted on a verdict of
9 guilty of the offense charged in the second count of the indictment in the above-entitled cause, to-wit: VIOLATION OF THE SELECTIVE SERVICE ACT, count one having been dismissed on motion of the Government, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of three (3) years.

IT IS FURTHER ORDERED THAT the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Sgd) J. SKELLY WRIGHT
United States District Judge.

IN UNITED STATES DISTRICT COURT

Transcript of Testimony

Proceedings had before HONORABLE J. SKELLY WRIGHT, Judge United States District Court for the Eastern District of Louisiana, in open Court in the above entitled and numbered cause, on September 10, 1951, at New Orleans, Louisiana.

Appearances:
RICHARD C. BALDWIN, ESQ., Asst. U. S. Attorney
HILARY GAUDIN, ESQ., THOMAS WICKER, ESQ.,
Asst. U. S. Attorneys for the United States
JOHN M. COE, ESQ., ALVIN B. JONES, ESQ.,
Attorneys for Defendant.

Mr. McKay: Your Honor, may we have the witnesses called and sworn, please?

The Court: Call the witnesses. (Witnesses called and sworn). You are instructed not to discuss this case with anyone, not even among yourselves. You may discuss it with Counsel representing the government or Counsel representing the defendant. Step in the next room. (Witness excluded from the Court room).

August A. Chrestia: Witness, being duly sworn and examined on behalf of the government, was examined and testified as follows:

Direct Examination, by Mr. Baldwin.

Q. Please state your name?
A. August A. Chrestia.
Q. What is your occupation, Mr. Chrestia?
A. As Chief Clerk of the Orleans Parish Local Board, Chief Coordinator of Records.
Q. What are your duties as chief coordinator?
A. Chief Clerk, custodian of the records of the Local Board, supervision of local clerks, and inspection of regis-
11 trants for the Local Board.
Q. Do you know Roosevelt Ward?
A. I do.
Q. Do you see him present in this Court room?
A. I do.
Q. Will you point that person out?
A. The man in the brown suit behind the defense attorney.
Q. Now, sir. I show you form marked SSS Form No. 1 and ask if you can identify this for me?
A. That is a card in the name of Roosevelt Ward, Jr.
Q. Now, sir, from this card will you read the address that this registrant gave at the time that he registered?
A. Place of residence, 2309 Upperline Street, New Orleans, Louisiana.
Q. From that card will you read the name of the person who would always know his whereabouts?
A. Dorothy Ward, 2309 Upperline St., New Orleans, Louisiana.
Q. From the same card read his employment?
A. Occupation, student.

Q. Does it state where?
A. Wilberforce University, Wilberforce, Ohio.

Offer: Mr. Baldwin:

In connection with the witness' testimony I should like to offer, introduce and file in evidence exhibit marked G-1, with permission of the Court to show it to the jury.

(Hands document to the jury).

Mr. Coe: No objection.
12 The Court: Let it be admitted.

By Mr. Baldwin: Q. At the time that a person registers with the Local Board, what if any, information is given to that registrant?

A. The registrant is informed that he must keep the local Board advised of his address at all times, and that he carry his registration card in his possession at all times.

Q. You say the registrant is informed that he must keep his card in his possession at all times?

A. Yes, sir.

Q. Is this issued to him at the time he registers?

A. Yes, sir.

Q. I now show you exhibit marked G-2 for identification and ask you if you can identify it?

A. Yes. This is a sample of the registration certificate given to registrants at the time of registering.

Q. Is this a copy of the certificate that the registrant must always keep in his possession?

A. Yes, sir.

Q. I ask you to read the bottom of that card, what appears in heavy print?

A. "The law requires you to have this card in your possession at all times for identification and to advise your Local Board of change of address."

Offer: Mr. Baldwin:

13 In connection with the witness' testimony the government offers, produces and files in evidence the card marked G-2 and asks permission to show it to the jury.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Document handed to jury).

The Court: You want them to see anything other than his address?

Mr. Baldwin: No, Your Honor.

Q. I now show you, sir, an exhibit marked G-3 for identification and ask you if you can identify this exhibit?

A. This is Selective Service Form No. 101, which is commonly referred to as a cover sheet, into which all the records of a registrant are placed.

Q. What name appears thereon?

A. Roosevelt Ward, Jr.

Q. All papers pertaining to Roosevelt Ward, Jr. are contained in this folder. Is that correct?

A. Yes, sir.

Q. Now, sir, will you explain the addresses and the information contained on this cover sheet, will you explain how that information is acquired?

14 A. At the time the cover sheets are originally made, they bear the same address as that given by the registrant at the time of registering. In this case, the registrant gave his address as 2309 Upperline Street.

Q. Will you be a little more specific and connect that with a number, if such exists?

A. I don't understand your question.

Q. You say at the time the person registers he gives an address?

A. Yes, sir.

Q. And that that address is recorded on his cover sheet?

A. Yes, sir.

Q. I see. You have tied that in specifically.

A. The information is extracted from this registrant's card, which is completed at the time of registration.

Q. What address was then given?

A. We have a change of address to 72 West 107th Street, New York City, New York. This address was given on March 30, 1950.

Q. Now, sir, what is the procedure of the Selective Service Board once a registrant has registered, what is the next step?

A. He is then assigned an order number, according to his date of birth, chronologically, and the cover sheet is made, the registrant's name, date of birth.

15 Q. Once this cover sheet is prepared, what then is done?

A. The registrant is then mailed his Selective Service questionnaire.

Q. Can you tell from the document which you have in your hand if the Selective Service questionnaire was mailed to the registrant?

A. Yes, sir. As a matter of fact there are two dates on here. The original questionnaire was mailed to the registrant on June 7, 1949 and below that is the notation duplicate mailed March 21, 1950.

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offers, introduces and files in evidence exhibit marked G-3.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Counsel hands document to the jury).

By Mr. Baldwin: Q. I now show you, sir, exhibit marked G-4 for identification purpose, and ask you if you can identify same?

A. This is a carbon copy of a letter addressed to Roosevelt Ward, Jr., at 2309 Upperline Street, New Orleans, Louisiana.

Q. What date is reflected thereon?

A. October 18, 1949.

16 Q. Now will you read the letter, please?

A. The letter reads as follows:

"Dear Sir: A draft questionnaire was mailed you on June 7th and to date we have not received same completed by you. In the event that you did not receive this questionnaire, contact our office and a duplicate will be mailed to you."

And it is signed by the Assistant Clerk of Local Board No. 45.

Q. Of your own knowledge, where did the address on that letter come from?

A. That came from the address given by the registrant at the time of registration.

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offer, introduces and files in evidence exhibit marked G-4.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. I now show you exhibit marked G-5 for identification, and ask you if you can identify that?

A. Yes, sir. That is the Selective Service System Classi-

17 fication Questionnaire.

Q. Whose name appears thereon?

A. Roosevelt Ward, Jr.

Q. What is the date that questionnaire was mailed?

A. March 21, 1950. This is a duplicate questionnaire.

Q. You have already testified that one was sent to him on June seventh?

A. That's right.

Q. What date was that questionnaire returned to the Selective Service Board?

A. March 30, 1950.

Q. And it was properly filled out?

A. Yes, sir.

Q. Now, sir, what address was that questionnaire mailed to?

A. 2309 Upperline Street, New Orleans, Orleans Parish, Louisiana.

Q. And where did that address come from?

A. From the registrant's card and also from the cover sheet of the registrant.

Q. Now, sir, on page 2 of this questionnaire under "Statements of the Registrant" "Series 1.—Identification", is there a change of address recorded there on?

A. Yes, sir.

Q. Will you give that change of address there?

A. "My address now is 72 West 107 Street, New York,
18 Manhattan County, New York."

Q. Will you just retain possession of that, sir? I now show you G-3 which has already been offered in evidence and ask you if there is a change of address thereon?

A. One of the questionnaires returned by the registrant, the clerk was instructed to check the address given by the registrant, and should the address be any different to that given previously, it would be recorded on this cover sheet for change of address.

Q. What is the purpose of the questionnaire which you have identified?

A. To furnish information in order that the Local Board members may determine the registrant's proper classification.

Q. Will you look on the last page of this questionnaire and tell me what notations appear thereon?

A. Under date of April 27, 1950 the registrant was classed in A-1 by a vote of three to nothing. On April 28, 1950 it is stamped, denoting SSS Form 110 was mailed. That form was mailed to the registrant.

Q. I show you exhibit G-6 for identification and ask you to tell us what that is?

A. Selective Service Form No. 110 which is notice of classification, and also bears date of mailing.

Q. From your previous testimony this is a copy of the classification card sent to the registrant?

19 A. That's right.

Q. Will you read what appears in the last paragraph of this card?

A. "The law requires you: (1) to keep in touch with your local board; (2) To notify it of any change of address; (3) To notify it of any fact which might change your classification; (4) To comply with the instructions on the notice of classification part of this form."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government offers, introduces and files in evidence the card marked G-6.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. Mr. Chrestia, will you continue as to what occurred—

A. On January 15, 1951 SSS Form No. 223 was mailed to the registrant.

Q. I now show you exhibits marked G-7 and G-8 for identification, and ask you if you can identify them?

A. G-7 is an Order to Report for Armed Forces Physical Examination.

20 Q. Who is that addressed to?

A. That is addressed to Roosevelt Ward, Jr.

Q. And what is the address appearing thereon?

A. No address appearing on the form. The address appears on the envelope which was returned by the Postal authorities.

Q. What address appears on the envelope?

A. 72 West 107th Street, New York, New York.

Q. I ask you if that is not the same address which appears on Selective Service questionnaire on page two?

A. Yes, sir, same.

Q. What disposition was made of that letter?

A. The Order to report for physical examination?

Q. Yes.

A. It was returned unclaimed.

Q. You stated this notice to report for physical examination was returned?

A. That's right.

Q. Will you read what appears on G-8, what notation appears thereon?

A. It has a postal stamp which reads: "Returned to sender. Removed. Left no address. New York, New York."

Offer: Mr. Baldwin.

In connection with the witness' testimony the government offers, introduces and files in evidence the letter and envelope marked G-7 and G-8.

21 Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. What is the procedure of a Local Board when any communication is sent to a registrant and is returned?

A. That would depend on which phase of the process it occurred.

Q. Well, we are at the physical examination phase and you have testified that this order to report for physical examination was returned. I now ask you what procedure does the Local Board go through?

Objection: Mr. Coe:

We object. The regulations themselves are the best evidence of what the procedure is.

The Court: Suppose you ask the witness what was done next.

By Mr. Baldwin: Q. What was done, sir?

A. To my knowledge the registrant was ordered to report for induction.

Q. I now show you, sir, an exhibit marked G-9 for identification and ask you if you can identify it?

22 A. This is a carbon copy of a form that the Selective Service use in endeavoring to locate a registrant, and is addressed to the person who would also know his address, as reflected by his registration card.

Q. Who is that addressed to?

A. To Mrs. Dorothy Ward, 2309 Upperline Street, New Orleans, Louisiana.

Q. Where was the name and address of that person obtained from?

A. From the registration card. I don't recall the particular item, but from the registrant's card as the person who would know his address.

Q. Is it the procedure of the Board to notify this person? When did the Board notify such person?

A. The Local Board endeavors to locate the registrant from the information given by him on his registration card.

Q. What is the date appearing on that exhibit?

A. January 25, 1951. A carbon copy of this card was also sent to Wilberforce University, Wilberforce, Ohio.

Q. I now show you exhibits marked G-10 and G-11 for identification and ask you if you can identify these?

A. G-10 also is a copy of form letter addressed to College of Education and Industrial Arts, Wilberforce, Ohio, endeavoring to locate the whereabouts of Roosevelt Ward, Jr.

Q. Will you please read that?

23 A. "This Board is desirous of locating Roosevelt Ward, S.S. No. 16-45-30215. It will be appreciated if you will furnish this office with any information which might aid us in locat-

ing him. We are enclosing a self-addressed envelope which requires no postage for your convenience in replying."

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-10.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. What is this exhibit marked G-11?

A. This is a carbon copy of a letter addressed to Mrs. Dorothy Ward, 2309 Upperline Street, New Orleans, Louisiana, a copy sent to the Registrar, Wilberforce University, Wilberforce, Ohio. Shall I read it:

Q. All right, sir.

A. "Dear Madam:

"This Board is desirous of locating Roosevelt Ward who
24 gave your name as the person who would always know his address. It will be appreciated if you will furnish this office with any information which might aid us in locating him. We are enclosing a self-addressed envelope which requires no postage for your convenience in replying."

Q. Will you read the notation appearing on the bottom?

A. "We do not have Roosevelt Ward registered at Wilberforce University. Please write to the College of Education and Industrial Arts, Wilberforce, Ohio. He may be a student there."

Signed by F. A. McGinnis, Registrar.

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-11.

Mr. Coe: No objection.

The Court: Let it be admitted.

Offer: Mr. Baldwin.

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-9.

Mr. Coe: That is the same one?

25 Mr. Baldwin: Yes.

The Court: Let it be admitted.

By Mr. Baldwin: Q. I show you exhibit marked G-12 for identification, and ask you what that is?

A. That is a letter received from the College of Education and Industrial Arts, received March 19, 1951.

Q. Who is that letter addressed to?

A. Miss Rita K. Vicknair, Clerk, Local Board No. 45, 320 Magazine Street, New Orleans, Louisiana.

Q. Will you read that letter?

A. "RE: Roosevelt Ward, S.S. No. 16-45-30-215. Dear Miss Vicknair: In reply to your inquiry regarding the above-named registrant, we wish to advise that he was enrolled at this institution during the school year 1946-1947. At that time his address was, 2309 Upperline Street, New Orleans, Louisiana. I regret that we are unable to give you any more recent information about this registrant."

That is signed by Melvin A. Johnson, Bursar.

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government
26 would like to offer, introduce and file in evidence exhibit marked G-12.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Document handed to the jury).

By Mr. Baldwin: Q. I now show you exhibit marked G-13 for identification, and ask you what that is?

A. This is a letter received February 2, 1951, from Mrs. Dorothy Ward under date of January 31, 1951.

Q. Now, sir, who is Mrs. Dorothy Ward?

A. Sir, Mrs. Dorothy Ward is the person who is listed on the registrant's card as the person who would always know the registrant's address.

Q. Will you read the letter?

A. "To the Selective Service: In reply to your letter about Roosevelt Ward, Jr., I haven't heard from him and don't know where he is located. His last address that I know was 204 W. 149, New York City. Since then I haven't heard from him. Very truly, Mrs. Dorothy Ward."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibit marked G-13.

27 Mr. Coe: No objection.

The Court: Let it be admitted.

(Exhibit handed to the jury).

By Mr. Baldwin: Q. I now show you exhibits marked G-14 and G-15 for identification and ask you if you know what they are?

A. Yes, sir. This is the original letter written to Roosevelt Ward, Jr. at 204 W. 149, New York City, New York.

Q. Can you tell we where that address came from?

A. Sir, that address apparently came from the information given by the registrant's mother, Mrs. Dorothy Ward.

Q. What disposition is reflected as to that letter?

A. The letter was returned, the envelope marked "Not at address given. New York, New York."

Q. And what is the address on that?

A. "204 W. 149, New York City, N. Y."

Q. Will you read that letter, please?

A. "Roosevelt Ward, Jr., 204 W. 149, New York City, N. Y. S.S. No. 16-45-30-215. Sir: On January 15, 1950, we mailed you the enclosed Order to Report for Armed Forces Physical Examination at your last mailing address reported to us. This notice was returned to us marked 'Moved'. You have failed to no-
28 tify this Board of your change of address. We are enclosing notice mailed you previously and ask that you bring same to Local Board within your jurisdiction and request transfer of physical examination. Failure to comply with our orders will eventually lead us to reporting you to the U. S. District Attorney as a Delinquent. Give this matter your immediate attention! Yours very truly, By Direction of the Board: Local Board No. 45, Rita K. Vicknair, Clerk."

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government would like to offer, introduce and file in evidence exhibits marked G-14 and G-15.

Mr. Coe: No objection.

The Court: Let them be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. Will you again refer to the exhibit which you have in your hand—

The Court: For the record, give the number.

By Mr. Baldwin: Q. G-5. What is the next step taken in the process?

A. "Failed to report for induction."

Q. I now show you exhibits marked G-16 and G-17 and ask you if you can identify those?

29 A. That is Selective Service Form 252 which is an Order to Report for Induction.

Q. Who is it addressed to?

A. Roosevelt Ward, Jr.

Q. And to what address?

A. 72 W. 107th St., New York, New York.

Q. And where did that address come from?

A. That address was given by the registrant when he returned his questionnaire.

Q. And what was the disposition of that letter as reflected by the envelope?

A. This notice was returned by the Postal authorities in New York with the notation: "Return to sender. Moved. Left no address. New York, New York."

Offer: Mr. Baldwin:

In connection with the witness' testimony the government would like to offer, introduce and file in evidence exhibits marked G-16 and G-17.

Mr. Coe: No objection.

The Court: Let them be admitted.

(Exhibits handed to the jury).

By Mr. Baldwin: Q. What was the next step taken by the
30 Selective Service System?

Objection: Mr. Coe:

I don't think any subsequent steps are material against this man for failure to report.

The Court: I overrule the objection.

A. I believe the registrant was reported to the U. S. Attorney for failing to appear for induction.

By Mr. Baldwin: Q. I now show you exhibit G-18 for identification and ask you if you know what that is?

A. That is Selective Service Form No. 301 entitled: "Delinquent Registration Report".

Q. Who is that addressed to?

A. "Honorable John N. McKay, United States Attorney, Post Office Building, New Orleans, Louisiana.

Q. And who does that refer to?

A. Roosevelt Ward, Jr., aliases none, last known address 2309 Upperline Street, New Orleans, Louisiana.

Q. I ask you to look at Part Three and read the information contained thereon?

A. "Effort made to locate man—"

Objection: Mr. Coe:

We submit that is irrelevant and immaterial.

31 The Court: It is an official record of the United States. Overruled.

By Mr. Baldwin: Q. I show you exhibits G-18, G-19, G-20, G-21 and G-22 for identification and ask you if you can identify these as pertaining to the registrant?

A. G-18 is Selective Service Form No. 301 which is a delinquent registration report.

Q. Who is it addressed to?

A. Roosevelt Ward, Jr., 2309 Upperline Street, New Orleans, Louisiana. G-19 is a carbon copy of the letter from the U. S. District Attorney to the Special Agent in Charge of the F.B.I. in reference to Roosevelt Ward, Jr. 16-45-30-215.

Q. Will you just read that letter?

Objection: Mr. Coe:

I object to each and every one of these exhibits as irrelevant and immaterial.

The Court: Step up to the Bench.

(Counsel in conference with the Court).

The Court: The question, as I understand it, is withdrawn.

Mr. Baldwin: It is withdrawn, Your Honor.

Q. I ask you on exhibit G-5, which you have already
32 identified, to read instruction five contained thereon?

A. "After this questionnaire has been returned, report to your local board at once any change of address, any change in place of employment or occupation, or any other new fact which may affect your classification."

Offer: Mr. Baldwin:

In connection with the witness' testimony, the government would like to offer, introduce and file in evidence exhibit marked G-5.

Mr. Coe: No objection.

The Court: Let it be admitted.

(Hands document to the jury).

Mr. Baldwin: We tender the witness, Your Honor.

Cross-Examination, by Mr. Coe.

Q. Let me get the sequence of events. This exhibit G-1 is the original registration card, dated I believe, September 18, 1948?

A. Yes, sir.

Q. From that you gentlemen gather, the Board gathered, I take it, that he was a resident of 2308 Upperline Avenue?

A. 2309 Upperline Street.

33 Q. And on that date in 1948 it shows the registrant was a student at Wilberforce University?

A. That's right.

Q. I assume you entered that on your record?

A. That's right.

Q. Then on March 21, 1950 you got a questionnaire which had been delivered to him and which was filled out. That questionnaire was addressed to 2309 Upperline Avenue, I believe?

A. That's right.

Q. That questionnaire shows his address as what, his living address at that time?

A. He said: "My address now is 72 W. 107 St., New York, New York."

Q. Do you have a place in the questionnaire for the name and address of the employer of the employee?

A. Yes, sir.

Q. Will you read what the name of his employer was, and the address?

A. "N. Y. Organizing Committee for a Labor Youth League, 799 Broadway, N. Y. C."

Q. So that it is true as of that date you were advised that he was no longer a student at Wilberforce University?

A. Yes, sir.

Q. I assume you entered that on your Board's records?

34 A. No, no place for it.

Q. That is in the questionnaire?

A. Yes, sir.

Q. Will you refer to your Regulation No. 1642; 41, Section-B?

A. Yes, sir.

Q. Will you read it?

A. "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Card SS Form No. 41, or other person likely to know his whereabouts. The Local Board may enlist the aid of local and State authorities as deemed advisable. In no event shall the Local Board order or participate in the arrest of a delinquent."

Q. Do your records indicate that at any time the Local Board ever endeavored to communicate with his employer?

A. The only address shown on the registration card No. 1.

Q. I know you would endeavor to communicate with persons who would always know his address, but did you at any time communicate with the Labor Youth League, 799 Broadway, New York City, New York?

A. No, sir.

Q. Then as I understand it, the only efforts the Board

35 made to locate him was confined to his mother at 2309 Upperline Street?

A. No, sir.

Q. You endeavored to communicate with someone else?

A. Yes, sir.

Q. Approximately when was that?

A. I would have to refer to the communication.

Q. January 31, 1951?

A. It was sometime prior to that.

Q. You communicated with the College of Education and Industrial Arts, Wilberforce, Ohio. Tell us what date that was?

A. March 6, 1951.

Q. And you had in the record at that time the questionnaire indicating he was out of school and employed?

A. Yes, sir.

Q. Now you likewise communicated with—no, that is a reply.

A. That is a reply received from the College of Education and Industrial Arts in answer to another inquiry. As a matter of fact it is an answer to this carbon copy dated March 6, 1951.

Q. In 1951 you were communicating with the school to which he had gone in 1948?

A. We communicated with the school listed on his reg-
36 istration card at the time he registered.

Q. Yes. And you sent one of the communications to him which was returned January 15, 1951, to 72 W. 107th Street, New York. Is that correct?

A. That is correct.

Q. Had you at that time already been advised that that had ceased to be his correct address?

A. No, sir.

Q. That is the first time you learned that was not his correct address?

A. No, sir. We didn't know that was not his correct address until we were notified by the Post Office in New York.

Q. And that letter came back on what date?

A. January 15, 1951.

Q. And then on March 26, 1951 you forwarded the order to report for induction to the same address from which that had been returned?

A. That is correct.

Q. And on March 19, 1951 you forwarded another letter to 204 W. 149th Street, New York City, New York, which was likewise returned?

A. That is correct.

Q. And on no occassion did you forward a letter to 799 Broadway?

37 A. No, sir.

Mr. Coe: That is all.

Redirect Examination, by Mr. Baldwin.

Q. Why didn't the Board send a letter to 799 Broadway?

Objection: Mr. Coe:

We are not charging the Board with wrongdoing, we are charging the Board with the failure to do something.

Mr. Baldwin: I think it very pertinent. I will change the question.

Q. Will you refer to Regulation 1642.41, part-B, and read that regulation slowly?

A. "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration Form Card SS No. 41, or other persons likely to know his whereabouts. The Local Board may enlist the aid of local and State authorities as deemed advisable. In no event shall the Local Board order or participate in the arrest of a delinquent."

Q. Now, sir, on exhibit G-1, which is the registration card, does he have the address of his employer?

A. "Firm or individual by whom employed" he has
38 "Wilberforce University" and employed as a student.

Q. And you have already testified on cross-examination that you did attempt to contact the registrant at that address?

A. Yes, sir.

Q. Now from that registration card, what other names of people or addresses are given?

A. Under "Name and address of person who will always know your address," he has "Dorothy Ward, 2309 Upperline, New Orleans, Louisiana."

Q. And you have testified on cross-examination that you attempted to contact this registrant through that person?

A. That's right.

Q. Any other information contained thereon?

A. No, sir.

Q. I show you exhibit G-14 and ask you where that address came from? What is the address, first?

A. 204 W. 149 Street, New York City, New York.

Q. Where did that address come from?

A. Apparently from the person who would always know the registrant's whereabouts.

Q. And you contacted the registrant at that address as shown on that exhibit?

A. That's right.

Q. You testified previously that G-5 was a questionnaire,
39 and you stated its purpose at that time. Will you reiterate its purpose?

A. The purpose of the Selective Service questionnaire is primarily that the Local Board may properly classify the registrant.

Q. The information contained therein is for the Local Board to classify the registrant?

A. That is correct.

Mr. Baldwin: No further questions.

Recross-Examination, by Mr. Coe.

Q. As I understand the notation on the registration card, it is the duty of the registrant to report changes of address?

A. That is correct.

Q. Have you any other way of getting a change of address of an employer, other than the information you receive on the questionnaire?

A. Yes. The man can write in, or verbally.

Q. No requirement that he should do so?

A. Yes. In event a man changes his employment he should notify the Board.

Q. Will you show me the regulation requiring him to give a change of address of an employer? I understand he is obliged to, if he changes his own address.

A. If I may have one of those Selective Service cards.
40 (Card handed to witness). "To notify it of any fact which might change your classification." A change of employer would mean a change of classification.

Q. In other words, you are interpreting it that way?

A. That is correct.

Q. And the only place in which you can record new employment, is the statement of the registrant at the time of signing the questionnaire, what the questionnaire says it is?

A. No other information other than the information the man submitted at the time he submitted his questionnaire.

Q. So that to get the current employer's address, if there had been a change of employment since that original registration card, you would have to refer to that sheet?

A. Yes, sir.

Q. Apparently that was not done?

A. My own opinion, I believe the Local Board exceeded the requirements of the Regulation.

Mr. Coe: That is all.

Mr. Baldwin: That is all.

Anthony J. Maloney, Jr.: Witness, being duly sworn on behalf of the government, was examined and testified as follows:

41 *Direct Examination*, by Mr. Baldwin.

Q. Please state your name and occupation?

A. Anthony J. Maloney, Jr., Special Agent of the Federal Bureau of Investigation.

Q. Sir, do you know a person by the name of Roosevelt Ward, Jr.?

A. Yes, sir.

Q. Do you see that person in the Court?

A. Yes.

Q. Will you point him out?

A. The man in the brown suit.

The Court: Let the record show the witness points out Roosevelt Ward, Jr.

By Mr. Baldwin: Q. Under what circumstances, sir, did you come to know Mr. Ward?

A. Pursuant to a warrant of arrest issued in New Orleans, Louisiana for a violation of the Selective Service Act of 1948, I arrested Mr. Ward in New York City on May 31, 1951. Subsequent to the arrest of Mr. Ward, and at the office in New York of the F.B.I., I interviewed Mr. Ward. At that time he told me that he was born in Burnside, Louisiana, in 1930; that he was
42 raised in New Orleans, and that in 1948 while residing with his parents at 2309 Upperline Street, New Orleans, Louisiana, he registered with Local Draft Board No. 45 in New Orleans. He said that after he registered, he moved from New Orleans, Louisiana to New York City. He stated that he did not notify the Local Board of his change of address from New Orleans Louisiana, to New York City when he did move.

Objection: Mr. Coe:

This gentleman is charged with the failure to notify his Local Draft Board of his change of address from New Orleans, Louisiana to New York City specifically between the thirtieth day of March and the first of June, 1951. I realize a slight error might be made, but I don't think they can go beyond the indictment.

The Court: One of the basic elements of this offense is knowledge, and evidence may be obtained which may not come within the dates specified in the indictment but may have very great relevancy on the question. On that basis I overrule the objection.

Mr. Coe: Exception.

A. Mr. Ward stated when he moved to New York City he took up residence with his aunt, Vivian Short, 204 West 149th Street.

He further advised me that sometime in 1949 after
43 receiving a Selective Service System questionnaire from his mother in New Orleans, which reached him at the home of Mrs. Vivian Short, he filled out his questionnaire and returned it to his Local Board in New Orleans. He further testified that sometime in 1949, due to crowded conditions in the apartment of Mrs. Short, he moved from the apartment at 204 West 149th Street to 206 West 149th Street. He could not be sure which address it was, but recalls it was the house next to the building where Mrs. Short lived. He further advised that since 1949 he has moved on several occasions, and at no time did he notify his local Draft Board of his change of address. He stated that he felt at all times—

Objection: Mr. Coe:

Same objection, and move to strike the statement "at no time did he notify his local draft Board of his change of address".

The Court: Same ruling.

A. (Witness continuing). He stated that at no time did he notify the Board of his change of address, feeling that the local Draft Board could contact him through his aunt, Mrs. Vivian Short, and at any time they wanted to contact him they could reach him through his aunt. I might add he stated that he filled out a
44 quesionnaire in 1949, which furnished the Board with the address of Mrs. Short as his current address. He admitted that he did not notify the Board of his change of address when he moved subsequent to 1949, but he notified the Draft Board of his address at 680 St. Nicholas Avenue.

Q. What was the date of the arrest, Mr. Maloney?

A. May 31, 1951.

Q. And at that time Mr. Ward gave his address as what?

A. 680 St. Nicholas Avenue.

Mr. Baldwin: We tender the witness.

Cross-Examination, by Mr. Coe.

Q. Do you by chance remember at what place you arrested Mr. Ward?

A. Yes, sir.

Q. Where was that?

A. 799 Broadway, New York City.

Q. That, I take it, is the office of the Labor Youth League?

A. That's right.

Q. Did you have any difficulty finding him there?

A. No, sir.

Q. You just went down there and arrested him?

A. Yes, sir.

45 Mr. Coe: That is all.

Mr. Baldwin: The government rests, Your Honor.

(Five minutes recess).

The Court: Will Counsel step up to the Bench?

(Counsel in conference with the Court).

Testimony on Behalf of the Defendant

Roosevelt Ward, Jr.: Witness in his own behalf, was examined and testified as follows:

Direct Examination, by Mr. Jones.

Q. Please state your name?

A. Roosevelt Ward, Jr.

Q. Now, Mr. Ward, what is your occupation?

A. I am Administrative Secretary of the Labor Youth League of New York City.

Q. Where does the Labor Youth League maintain its office?

A. 799 Broadway, New York City.

Q. How long had you been employed by the Labor Youth League?

A. From 1949 until I was arrested.

Q. At the time that you returned the completed ques-
46 tionnaire to the Draft Board, did you furnish the Draft Board with your address?

A. Yes.

Q. What address?

A. New York Organizing Committee for the Labor Youth League, 799 Broadway, New York City.

Q. Mr. Ward, where were you in the habit of having your mail addressed to you?

Objection: Mr. Baldwin:

I am going to object to that as immaterial. This defendant is charged with not giving his address during a particular time. It is a self-serving declaration.

Mr. Jones: We believe it is relevant for the reason one of the counts the defendant relies on, is that he did not furnish them with the residential address to which he moved, for the reason he relied on the fact that he could be contacted at his business address, and we are in position to show that he did in fact give them his business address and could have been contacted there by the Draft Board.

The Court: I overrule the objection.

By Mr. Jones: Q. I will repeat the question. What address were you in the habit of having your mail addressed to?

47 A. 799 Broadway.

Q. I show you these envelopes marked D-1 for the purpose of identification and ask you if you can identify them?

A. They are all letters that I received at 799 Broadway, addressed to me.

Offer: Mr. Jones:

In connection with the witness' testimony, we should like to introduce into evidence the envelopes marked D-1.

Mr. Baldwin: No objection.

The Court: Let them be admitted.

(Documents handed to the jury).

By Mr. Jones: Q. At the time that you first left New Orleans and went to New York, at what address did you reside?

A. I first lived at 204 W. 149th Street.

Q. Did you at any time receive any mail addressed to you there?

A. Yes, I did.

Q. I show you envelope marked D-2 for the purpose of identification and ask you if you can identify that envelope?

A. Yes, sir. This is a letter I received at 204 West 149th Street, New York City.

Offer: Mr. Jones:

48 In connection with the testimony of the witness I would like to introduce in evidence the exhibit marked D-2.

The Court: Let it be admitted.

(Hands document to jury).

By Mr. Jones: Q. Now Mr. Ward, did you at any time receive an induction order from Local Board No. 45 addressed to you at 799 Broadway, or at any other address?

A. No, I did not.

Q. Did you at any time have knowledge from any other source that such an order had been issued?

A. No, I did not.

Q. Now Mr. Ward, had you received such an order, that is, an order to report for induction, would you have complied?

A. I would have immediately complied.

Q. If given the opportunity to comply, would you be willing now to enter into the performance of your duty?

Objection: Mr. Baldwin:

I object as irrelevant and immaterial.

The Court: Sustained.

By Mr. Jones: Q. Have you at any time since your release from custody presented yourself at the Office of the Draft Board
49 and made an effort to become inducted into the Service?

Objection: Mr. Baldwin:

I object on the same grounds, irrelevant and immaterial, Your Honor.

Mr. Jones: We take the position, and it has been decided that the intent of the registrant to report after the date he had been ordered to report is a material fact in determining whether he attempted to evade the performance of his duty, and we feel for this reason this evidence is relevant.

Mr. Baldwin: The government still takes the position this defendant having failed to report for induction, there is no question before this Court whether this defendant is now willing to go into the service. It is irrelevant and immaterial.

The Court: If this defendant made an offer after he was apprehended by the Federal Bureau of Investigation it would seem to have no probative value.

Mr. Baldwin: Might to the weight, but I don't think to the admissibility.

The Court: I sustain the objection.

50 Mr. Jones: I tender the witness.

Cross Examination, by Mr. Baldwin:

Q. Mr. Ward, when you first went to New York City what was your address?

A. 204 West 149th Street.

Q. Did you report that address to your Draft Board?

A. I did not report it because I was only there for a while and I didn't know whether I would stay there permanently. I was living there temporarily.

Q. And you did not report it?

A. No.

Q. Your family knew where you were going?

A. Yes.

Q. Your mother knew where you were going?

A. My mother knew and my father knew.

Q. Everybody knew you were going to 204 West 149th Street?

A. Until I found other residence.

Q. Did you contact your mother after you found other residence?

A. Immediately after I found other residence?

Q. At any time.
A. Sure.
Q. And you told her where you were?
51 A. Yes.
Q. Did you hear from your mother during that time?
A. Yes. I heard from my mother at 204 West 149th Street.
Q. I show you exhibit G-13. Will you read that?
A. "In reply to your letter about Roosevelt Ward, Jr. I haven't heard from him and don't know where he is located. His last address that I know was 204 W. 149, New York City. Since then I haven't heard from him."
Q. What is the date of that letter?
A. January 31, 1951.
Q. Who signed that?
A. Mrs. Dorothy Ward.
Q. Who is Mrs. Dorothy Ward?
A. My mother.
Q. Didn't you give the name of Mrs. Dorothy Ward as the person who would always know your whereabouts?
A. I did.
Q. Did you ever notify the Board that Mrs. Dorothy Ward would not know of your whereabouts?
A. No, I didn't because she always did know my whereabouts.
Q. Let's try to go back over this. You went to New York. You lived at 204 West 149th Street?
A. That's right.
Q. You didn't notify the Board of that?
A. I didn't notify the Board. I lived there temporarily.
52 Q. About how long did you live there?
A. Approximately two months.
Q. And you did not notify the Board of that address?
A. No.
Q. Where did you go from there?
A. Seventh Avenue, New York City.
Q. Did you notify the Board that you had moved to Seventh Avenue?
A. No.
Q. Did you notify your mother that you had moved to Seventh Avenue?
A. Yes.
Q. When did you go to Seventh Avenue?
A. In 1949.
Q. And you notified your mother?
A. Yes.
Q. Where did you go after that?
A. You mean where did I move to?

Q. Where did you move to.

A. My next address was 72 West 107th Street.

Q. Did you notify the Board of that address?

A. On the questionnaire that is the address I notified them of.

Q. Did you notify your mother that you were living there?

A. Yes. My mother knew I was there.

53 Q. You realize that this letter I just showed you is dated January 31, 1951?

A. Yes, 1951.

Q. Written by your mother?

A. Yes.

Q. What address did your mother refer to as your last known address?

A. 204 West 149th Street.

Q. When you say you gave your mother the address 72—

A. I didn't give her the address. She knew I was living there.

Q. How did she know that?

A. How did she know? Because I was living there at the time of a visit from my father.

Q. What was the circumstance of the visit?

A. The circumstance of the visit of my father?

Q. Yes.

A. He came to New York after he received the questionnaire which they sent to 2309 Upperline Street, and being it was only ten days to return the questionnaire, he felt he would try to get there and be there when I received the questionnaire in case I had not visited my aunt within the ten days, so he would attempt to find me.

Q. Your father came up there with the questionnaire?

A. No, he didn't. The questionnaire was sent directly

54 to my aunt.

Q. Why didn't your father call you? What was the necessity for him to come up there?

A. I can't speak for my father's motives. All I know is he came.

Q. Isn't it a fact your father didn't know where you were when he came to New York?

A. Yes. I said after he got there my father did locate me when I went to my aunt's house.

Q. But he didn't know where you were when he went up there?

A. He didn't know my exact address. He contacted me through my aunt.

Q. He knew you were in New York?

A. Yes.

Q. When did you move to St. Nicholas Avenue?

A. I moved there in April because of some housing problems in New York.

Q. Did you notify your Draft Board of that address?

A. No, because the Draft Board was acquainted with my employer's address, and I didn't know if I would stay there, because I was living in a room.

Q. In other words, you take the position if you were going to be in the place two months it was not necessary to comply with the requirements of the Board and notify them of your change of address?

55 A. No, I didn't take that position. I felt they could always contact me at the address of my employer.

Q. You are aware of the regulation which requires you to furnish any change of address?

A. Yes.

Q. And you furnished the Board with only one change of address all the time you were in New York?

A. That's right, except the address that never changed, which was my job.

Q. You know the purpose of a questionnaire?

A. I think I know.

Q. What is your opinion of the questionnaire?

A. Well, the Selective Service Act is the law of the United States, and under that Act all young people between certain ages are required to present themselves for service in the Armed Forces. Now the questionnaire is only to mail certain facts in order to identify that person and to be able to locate him when it is necessary.

Q. Such as finding out his employment. That has a great deal to do with a person's classification?

A. I don't know about that—the Draft Board does the classifying.

Q. That's right, the members do that?

A. I don't know. I know that the Selective Service Board receives the mail. I am not acquainted with all the specifications about how they classify them and so forth.

56 Q. But you do realize that a questionnaire is for the purpose of the Board to consider and classify a registrant?

A. Yes, the Board.

Q. And whatever information is contained in there, the Board considers it in classifying a registrant?

A. Yes, and also informing him of that classification, and also learning his whereabouts and so forth. I don't think they just notify him and forget about the questionnaire, but the information contained in that questionnaire is used in order to reach the person, and so forth.

Q. Are you familiar enough with the law to state that? You just stated you knew enough to know you had to furnish the Board with your change of address?

A. I did inform them of my address.

Q. You feel that by filling out something that had to do with your classification, that you complied with the address requirements of the Selective Service Act?

A. Yes. That address was sufficient for me to give them the information, that the Selective Service Board would always have.

Q. You now feel that the Board, every time they wanted to contact you, would go through every paper and questionnaire which has to do with classification?

A. No. If I had been certain as to where I would be
57 living for an extended period of time, I would have informed them of my permanent address, but on the questionnaire the addresses that were given—there were two addresses which I gave, one of which remained permanent as of the time they arrested me.

Q. You see, I am having a hard time. You have testified that the questionnaire is for classification purposes?

A. I don't know the full extent of the questionnaire, what it is for besides qualification, but any young person who receives a questionnaire relies upon that questionnaire for his classification and anything else that comes about. If in the period of time the information contained in that questionnaire does not change, the place of employment never changed, I rely upon that fact.

Q. Didn't your place of employment change from the time that you registered? When you registered, where was your place of employment?

A. I was out of work.

Q. But you gave the place of employment on your registration card?

A. Place of employment?

Q. Would you read line-10?

A. "Place of Employment or Business, Wilberforce, Ohio." On this form, I don't know in relation to how the question of your going to school could be considered employment or not.
58 I attended Wilberforce University.

Q. And you gave that place as your place of employment?

A. I didn't write that form out there myself. I don't recall.

Q. Maybe that's wrong?

A. I don't know. I am not saying its wrong. I attended Wilberforce University and I gave that information.

Q. Did you sign that card?

A. I don't know. I didn't look at it that well.

Q. Try again?

A. Yes, I signed it, and nothing is incorrect in it.

Q. Then line-10 is correct, your place of employment, Wilberforce, Ohio?

A. Yes.

Q. Did your place of employment change?

A. That's right.

Q. You gave that change in your questionnaire?

A. That's right.

Q. And yet you figured that was sufficient?

A. That's right.

Q. You figured that the Board would still contact you at the other place?

A. What other place?

Q. The first employment you gave in your questionnaire.

A. I registered in 1948, and a year or two later I sent
59 them something which showed that my place of employment had changed, I think that last information I gave the Board would supersede any information I gave them at the beginning.

Q. That is not exactly what is required of you. You are required to give a change of address.

Mr. Coe: I think this is generating into an argument with the witness.

The Court: You are arguing with the witness. Let's get the facts you want from him.

By Mr. Baldwin: Q. Who is Vivian Short? A. Mrs. Vivian Short is my aunt.

Q. And where does she live now?

A. 204 West 149th Street, apartment six. She lives there now and lived there before.

Q. In other words, mail sent to you there would have reached you?

A. Yes, reached me.

Q. Did you ever give that address to the Local Board?

A. The Local Board received that address.

Q. Now wait a minute. How do you know that the Local Board received that address?

A. Because I received mail there at that address.

60 Q. Now you knew that mail was being delivered to you at that address?

A. Yes.

Q. Did you ever give that address to the Local Board?

A. They had the address.

Q. Did you ever go back to that address and try to get your mail?

A. That's right, continued over the past number of years.

Q. And you never got anything else that was addressed to you?

A. Yes, and my aunt will testify to that fact.
Q. What is the postmark on this envelope?
A. October 10, 1949.
Q. What address is on there?
A. 204 West 149th Street.
Q. Ever get any mail there since this?
A. Yes, I received mail there.
Q. You never received anything addressed to you from the Draft Board?
A. Never received anything at that address.
Q. Looking at G-14 addressed to you, what does that state?
A. "Not at address given."
Q. And yet you tell me you have been receiving mail there right along?
A. That's right.
61 Q. And the Post Office Department just picked this out and said you were not there?
A. I can't testify for the Post Office. I received mail at that address. I had other letters which showed that I received mail there. I have never seen this letter before. Now I don't know what happened. That letter may have the address, or maybe it wasn't sufficient. I don't know the reason, but I don't know anything about that letter, because I never received it.
Q. Why, if you were receiving mail at 204 West 149th Street, did you then expect the Board to deliver your mail to your place of employment as requested in your questionnaire?
A. Because the Board—in any event that letter did not reach me. That is the address that remained permanent, that I was certain of, and never changed.
Q. You knew your Local Board was dealing with you at 204 West 149th Street?
A. After I gave them an address at 72 West 107th Street, that was after I had received mail at 204. Then that became for the time a permanent place of residence, until unfortunately certain conditions caused it to be changed. Then the address I relied upon was the place of busines, because since I have received mail at another place of residence, other than 204, since the last time they had contacted me there, I relied on that business ad-
62 dress as always the place where I could be reached.
Q. Did you ever ask your aunt to keep your mail for you?
A. That's right.
Q. Did you ever speak to the boss man?
A. No, I never did.
Q. From all of these places where you received mail, did you ever leave a forwarding address?

A. Did I leave a forwarding address?
Q. Yes.
A. I don't recall.
Q. You gave the address 72 107th Street in your questionnaire?
A. Yes.
Q. You knew the Draft Board had that address when you left there?
A. That's right.
Q. Did you leave a forwarding address?
A. No, because the place I moved to I didn't know how long I would be there, and I once again relied on the fact they had the address of my place of employment where I could be reached at that time.
Q. Did you know that under the law you are required to give your current address to the Board?
A. Did I know?

Q. That under the Selective Service law you were re
63 quired to give your current address to the Local Board?
A. My current address?

Q. Did you know that under the Selective Service law you were required to give your current address to your Local Draft Board?
A. Yes.
Q. Did you feel that after a certain lapse of time and you hadn't heard anything from your Draft Board, did you think anything was strange?
A. I didn't know.
Q. You had received a 1-A classification, had you not?
A. I had.
Q. When did you receive it?
A. I don't recall the exact time.
Q. Did you have it on you?
A. No, I didn't. I had the classification on me which I gave to my attorney.
Q. What is the address thereon?
A. Where this was received? (Indicating).
Q. Yes.
A. 72 West 107th Street.
Q. And what is the postmark on there?
A. April 28, 1950.
Q. And that reflects your classification to be what?
A. 1-A.

64 Q. When were you arrested?
A. May 31, 1951.

Q. And you had not heard from your Board in over a year after being classified 1-A?
A. That's right.

Q. And you were not worried?

A. I felt it was up to the discretion of the Local Board to contact me when they felt.

Mr. Baldwin: No further questions.

Redirect Examination, by Mr. Jones:

Q. You have just testified that you supplied your Local Board with the address of your employer?

A. Yes.

Q. And you felt that you could have been contacted there?

A. Yes.

Q. What else, if anything, did you rely upon in feeling that the Draft Board could have contacted you at 709 Broadway?

Objection: Mr. Baldwin:

I object.

The Court: On what ground?

Mr. Baldwin: It has no bearing. He has already testi-
65 fied as to the address where he could always be located.

Mr. Jones: I think the defendant had reason to believe he could be contacted where he was employed, and he testified he relied upon that fact.

The Court: I overrule the objection.

A. I relied upon one other fact, that my roommate I lived with in New York for the past two years who was registered at a New York address, being forced to move at the same time I was, we roomed together, the Draft Board not being able to contact him at his residence, sent him a letter at his work, and I felt that was further proof of the fact that my employer's address was sufficient for them to reach me, and he received that communication at his place of employment.

Q. Did the fact of your roommate receiving this letter, lead you to believe that this was the policy of the Board, where it was unable to contact a person at some other address?

A. It did lead me to think that.

Q. Mr. Ward, the envelopes that we showed you and had you identify, do they constitute all of your mail sent to you at that address?

A. No, only a small portion of the mail.

Q. In other words, there was other mail addressed to you
66 at this place?

A. That's right.

Mr. Jones: That is all.

Recross Examination, by Mr. Baldwin:

Q. Who was your roommate?

A. Roosevelt Jackson.

Q. You relied upon the fact that his Draft Board had contacted him at his place of employment?

A. Yes, Sir, one factor that made me more confident.

Q. Do you know where the Draft Board got that address?

A. I don't know.

Q. It might have been on his registration card?

A. I don't know.

Q. At the time you registered were you going to college?

A. No, I was not.

Q. In line ten you gave your place of employment as Wilberforce University?

A. I had gone there.

Q. And yet you expected the Board to contact you at the place of employment you now have—

A. I included all the information on the questionnaire that brought me up to date. The questionnaire was much more up-to-
date than the registration card, and I relied upon that
67 questionnaire. I gave my place of employment on that questionnaire.

Q. At the time you registered, you gave the firm or individual by whom employed as Wilberforce University. Were you employed or going to school there?

A. I had gone to school there. I wasn't there at the time.

Q. Did you expect the Board to contact you there?

A. No, not at that time, no.

Q. But you now expect the Board to contact you at a place—

Objection: Mr. Jones:

I object. I think we are getting into argument.

Mr. Baldwin: No further questions.

By Mr. Jones: Q. I would like to show you this registration card marked G-1 and ask you whether or not you recognize this as the card you filled out when you registered?

A. My name is affixed to it, so that—

Q. Do you recognize the information thereon as the information you supplied to the Board at the time you registered?

A. I recognize some of the information I supplied.

Q. I would like you to read questions seven and eight and the answers indicated thereon?

A. "Occupation, Student. Firm or individual by whom employed. Wilberforce University."

68 Q. At the time that you registered you gave the information that you were a student at Wilberforce University. Did you give the information with the view that Wilberforce University was your employer, or the university you had attended as a student?

A. I gave it as the university I had attended as a student.

Mr. Jones: No further questions.

By Mr. Baldwin: Q. You read that card at the time you signed it?

A. Did I read it?

Q. Yes.

A. I must have read it, but I didn't fill that card out. I signed it.

Mr. Baldwin: No further questions.

By the Court: Q. Did you have any trouble receiving any other mail during this period at any place?

A. No, no trouble receiving any other mail that I know of, Your Honor.

Q. In other words, the only mail you had any trouble in receiving during this period was this mail from the Selective Service Board?

69 A. I don't know that that was the only mail that I did not receive.

Q. As far as you know it was the only mail?

A. As far as I know it was the only mail.

Q. Can you tell this jury any reason why your mother could not help this Board to contact you during this period?

A. I maintained contact with my mother through the address at my aunt. That was the place from which I wrote, and so forth. I had always kept in touch with my mother on birthday occasions, and so forth. I don't know, I mean it is hard for me to speculate as to the reason why my mother was not able to fully help the Board, but I imagine that it would have been because she was excited to an extent that I was brought—I mean that there was trouble involved, and consequently might not have taken all of the possible means to help contact me.

Mr. Baldwin: At this time it is quite evident from the evidence offered the government is unable to prove this defendant did in fact receive, or had orders to report for induction, therefore at this time the government asks, with leave of the Court, to nolle prosequi count one of the indictment.

The Court: As I understand it, the government is abandoning count one which relates to unlawfully and knowingly failing to comply with an order to report for induction, and the government is now standing on count two which alleges that he know-

70 ingly failed to furnish said Local Board with his correct address where United States mail might reach him. Is that the government's position?

Mr. Baldwin: That is the government's position.

The Court: It is so ordered.

Mr. Baldwin: The government rests, Your Honor.

Mr. Coe: The defense rests.

The Court: Court will stand at recess until two o'clock.

2:00 P. M. After Recess:

Mr. Coe: The defense has a motion it wishes to present. (Hands document to the Court).

The Court: Let the jury retire. (Jury retired).

(Argument by Mr. Coe on motion for failure of the defendant to notify the Board of change of address).

The Court: I understand your motion. As I said before, one of the primary responsibilities of the government in this case
71 is to prove knowledge that this defendant failed to obey the duties required of him. All of the evidence has been introduced to which objection is now being made bearing on the question of knowledge, and for that reason I deny the motion made by Counsel.

Mr. Coe: Now if the Court please, I would like to submit my motion for judgment of acquittal.

(Argument on motion).

The Court: On the basis of the evidence I think it is a jury question as to whether or not mail from the Selective Service Draft Board No. 45 would have reached this defendant anywhere. He supplied the Draft Board with several addresses, including the address of the person who would always know where he was, but in spite of the Draft Board's efforts no success was achieved in locating this man through the addresses given. The question of whether or not he could have been located at some other address is a question that the jury might decide in the light of all the evidence. I say further, and again, that this jury may very well decide that this defendant did not want to receive any mail from his Draft Board, in spite of the fact he received other mail at various places, including the place where mail was addressed to him by the Draft Board. He says nothing was received
72 from the Draft Board. I think it is a jury question on the second count. I overrule the motion. Call the jury.

(Jury returned to the Court).

IN UNITED STATES DISTRICT COURT

Judge's Charge

Ladies and Gentlemen:

You have heard the evidence and the argument of counsel and it now becomes my duty to give you the law governing this case. It is your duty to accept the law as it is given to you by the Court and to determine the facts of the case for yourselves. The proper application of the law of the case to the facts of the case, as you find them, determines your verdict. I wish to make it very plain to you, that the sole responsibility and the sole power in determining the facts are with you, and anything that I may say, or seem to say, as indicating any view or opinion on the facts can only be advisory to you.

Now, there are some general principles of law which are of importance in every criminal case, and I wish first to make some statements that apply to criminal cases in general; after which I shall endeavor to make clear to you what this particular case involves.

It is a well recognized principle in law that every person who is charged with the commission of a violation of the law is
73 presumed to be innocent, and the burden rests on the government to establish to your satisfaction beyond any reasonable doubt that the party is guilty as charged. This presumption of innocence remains with the defendant all through the case until it is overborne by proof which satisfies you beyond any reasonable doubt that the presumption of innocence no longer remains with him. So you must look to all the evidence introduced in this case, and ask yourselves whether or not you are satisfied beyond any reasonable doubt that the offense has been committed as charged in the indictment. If you are so satisfied, then it will be your duty to convict the defendant. But if there exists in your mind a reasonable doubt of his guilt you must then give him the benefit of that doubt and acquit him. So that if there are two reasonable theories, equally supported by the evidence, one of which is consistent with the guilt of the defendant and the other consistent with his innocence, then you must adopt that theory consistent with innocence and acquit him, because he could not be said to be guilty beyond a reasonable doubt.

Now the term "reasonable doubt" as used in this charge does not mean just any possible doubt you might have, but it means such reasonable doubt as a careful, prudent and reasonable man ought to entertain in the circumstances proven. It means a doubt based on reason, and which is reasonable in view of all the
74 evidence. It does not mean a vain, fanciful or whimsical

doubt, nor does it mean a possible doubt created by the reluctance on the part of a jury to perform an unpleasant task. It means a doubt arising out of the evidence that is based upon substantial grounds and one is said to be convicted in a case of this kind beyond a reasonable doubt, when, after an impartial comparison and consideration of all the evidence, you can conscientiously say that you feel an abiding conviction to a moral certainty of the truth of the charge. If there is a reasonable doubt in your mind about the guilt of the defendant on a charge in the indictment, he is entitled to the benefit of such reasonable doubt and to acquittal on that charge. If, on the other hand, you think his guilt is clear beyond a reasonable doubt, then you are authorized to find him guilty on that charge.

Now the machinery of a trial calls for the exercise of varying functions by Counsel, by the witnesses who testify, by the Court that presides and by the jury. You, as the jury, exercise two important and exclusive functions.

First, you are the sole judges of the facts. That is to say, it is you who must consider the evidence, weigh the evidence, and draw the inferences from the evidence, and only from the evidence.

Secondly, you exercise the exclusive function of passing
75 upon the credibility of the witnesses. You can see that this is a very important function, because to determine where the truth lies you must of necessity decide who is telling the truth. How you are to do that is left to your own determination. Ordinarily, in the usual walks of life we employ tests such as these: What is the consistency of the story told? Are there important contradictions? What is the demeanor of the witness who tells the story? Is he evasive, or does he give his answer directly—indicating truth? Does he have an interest in the case? These tests you doubtless will apply, though you are not compelled to do so. You will exercise in the last analysis your own common sense.

If conflicts in the testimony exist, it is your duty to reconcile them without imputing perjury to anyone, if you can reasonably do so; but if you find that a witness has wilfully and falsely testified on a material matter, you should, of course, disregard that false testimony and you may if you choose disregard any and all testimony given by such witness. The credibility of the witnesses and the weight of their evidence are solely matters for your determination. You are exclusively the judges in determining where truth lies.

So now we come to the proposition that in entering upon the
final stage of the case your responsibility is to take the evi-
76 dence, weigh it, and render a just verdict between the gov-

ernment of the United States and this defendant. This brings us directly to the charges themselves.

The indictment is a mere accusation and not evidence against the accused. Count one has been abandoned by the government and the jury will not consider count one. Count two charges that the defendant, a registrant of Selective Service Board No. 45, did unlawfully and knowingly fail to furnish said local board his correct address where United States mail might be delivered to him, as required by law.

Now the particular statute with reference to this charge is Section 12 of the Selective Service Act of 1948 which to the extent here pertinent provides that any person "who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title, shall, upon conviction be punished," and here follows the penalty with which the jury is not concerned.

As set forth above the indictment charges the defendant with the failure to perform a certain duty imposed upon him by the regulations promulgated under the Selective Service Act of 1948. The applicable regulation, which is binding on the defendant only to the extent that he may know about is 1641.3. Section 1641.3 to the extent here pertinent provides as follows:

77 "It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the local board to a registrant at the address last reported by him to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not."

From the foregoing it is apparent and the Court accordingly instructs the jury that the Act does not denounce as criminal, every failure to perform a duty imposed by the statute or regulations, but only seeks to punish a person "who shall knowingly fail or neglect" his duty. There must be a specific wrongful intent. An actual knowledge of the existence of an obligation and a wrongful intent to evade it is of the essence. Before this defendant can be found guilty this jury must be convinced beyond a reasonable doubt not only that he has failed to keep his board advised of the address where mail would reach him but also that he knowingly failed to do so. Unless the element of knowledge on the part of the defendant is found by you as a fact to have existed, or if you have a reasonable doubt of its existence, it will be your duty to acquit the defendant. The intent and motives of the defendant are the most important factors in this case.

Now in weighing the evidence in this case, you should
78 consider the circumstantial as well as the direct testimony, for frequently, it is not possible to prove facts by direct testimony. This is especially true when knowledge, motive, intent or purpose is one of the facts to be proved, so that circumstantial evidence is often of necessity resorted to in order to ascertain the truth. Now knowledge, motive, intent or purpose has to be deducted from the circumstances, unless a person admits such things. Their existence can only be established by proving the circumstances of the transaction. You cannot look into a man's mind and see what he knows or what his purpose, motive and intentions are. You must necessarily look to the surrounding circumstances to determine these things. Now as to the question of knowledge or lack of knowledge, it is proper to look at the circumstances as they existed at the time the transactions took place, and if anything wrong was being done, wrongs charged in the indictment, you will then look to see whether or not the defendant knew of the circumstances and whether or not he intended to do those wrongs.

Take all the circumstances proved in connection with defendant's activities and make up your mind whether or not he knowingly failed and neglected to perform the duty required of him under the Act or Regulations. Before you can convict the defendant you must find from the evidence beyond a reason-
79 able doubt that he had both knowledge of, and a specific intent to commit the offense charged.

In this case you will consider both the direct and circumstantial evidence introduced.

In weighing the circumstantial evidence in the case, you want to keep your minds clear and consider what is actually proved in the way of circumstances, what is known to be true. If the circumstances proved point with certainty to a conclusion, if they exclude every reasonable doubt from your minds, every reasonable hypothesis other than that of guilt, then circumstantial evidence is sufficient to convict a person of crime. If, however, the evidence and circumstances as a whole are such that they leave you uncertain as to whether guilt is or is not shown by them and there is such uncertainty that you feel that doubt to be reasonable, then, of course, acquittal will follow under the rule I have already given you to the effect that a defendant must be proved guilty beyond a reasonable doubt before he can be convicted.

Now Counsel for the defendant has requested special charges.

Request number one relates to count one, which has been abandoned and consequently will not be given.

Request number two will be given.

The Court charges you that under the second count it is charged that the defendant did unlawfully and knowingly

80 fail to furnish his Local Board with his correct address where United States mail might be delivered to him; and if you find from the evidence that the defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he is not guilty, and you must find a verdict of acquittal.

Requested charge number three is denied.

Finally and in conclusion let me say that it is your duty to weigh the evidence carefully, dispassionately, calmly, and to reach a conclusion about the case as to the facts, which are wholly within your findings. The sole and only question for your consideration is whether the defendant is guilty of the offense for which he is on trial. If you are satisfied beyond a reasonable doubt that he is guilty, it is your plain duty to convict him. If you have a reasonable doubt about the matter it will be equally your duty to acquit.

Now all twelve of you must agree, whichever way you find; in other words, your verdict must be unanimous.

If you find the defendant guilty, the form of your verdict should be: "We, the jury, find the defendant guilty as charged."

If you find the defendant not guilty, the form of your verdict should be, "We, the jury, find the defendant not guilty."

81 Upon retiring you will select your own foreman and your verdict will be endorsed on the indictment and dated and signed by the foreman whom you select.

Any exceptions to the charge by the government?

Mr. Baldwin: No, Your Honor.

The Court: Any exceptions to the charge by the defense?

Mr. Coe: I except to the refusal to give charge number three, also to your charge that "The intent and motives of this defendant are the most important factors in this case."

The Court: The exceptions taken by Counsel are matters which direct themselves to the Court. They are matters with which the jury is not concerned. You may now retire.

(Jury retired at 3:15 p.m.)

(Jury returns at 3:30 p.m.)

A Juror: We would like to ask a question.

The Court: State your question, please.

A Juror: The charge says between the dates of March 30,
82 1951 and May 31, 1951, if he failed to notify the draft board at any other time except between those dates.

The Court: May I have that again, please?

The Juror: Does the law say he has to notify the Draft Board between those dates, or notify the Draft Board every time he moves?

The Court: In answer to the first part of the question it was not necessary that he notify the Draft Board between those particular dates.

The Juror: It was not necessary?

The Court: Between those particular dates, March 30, 1951 and May 31, 1951. Does that answer your question?

The Juror: Yes, sir.

The Court: Let the jury retire.

(Jury retired at 3:45 p.m.)

(Jury returns at 4:00 p.m. with guilty verdict).

Mr. Coe: If the Court please, we would like to have the
83 jury polled. (Jury polled).

The Court: Is the defendant ready for sentence?

Mr. Coe: Yes, sir.

The Court: It is ordered and adjudged the defendant having been found guilty he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years.

Mr. Coe: I would like to give notice of appeal and request the Court to grant a writ of supersedeas and fix the bail bond.

Mr. Baldwin: At this time the government requests that bail be set at $20,000.00. There is information now in the file, and this defendant has admitted on the stand that he belongs to the National Youth League, and there is information in our files also from the F.B.I. that this defendant is under surveillance by them.

Mr. Coe: I respectfully submit to the Court the fact that this defendant may be viewed by the government for some immaterial fact known to the government, there is no proceeding
84 or indication here to that effect, and whatever may be the opinion of the jury, it is not an aggravated case to lead people to think he was a man of bad motives and evil inclinations. I respectfully submit to the Court there is no evidence to justify such an exorbitant bond.

The Court: A man has no Constitutional right to bail pending appeal, as I understand the law. I will set the bond as requested by the government at $20,000.00 until the Court can get the report from the Federal Bureau of Investigation as to the background of this man.

Mr. Coe: We will proceed with the appeal as soon as we can file our papers.

IN UNITED STATES DISTRICT COURT

Notice of Appeal—Filed September 11, 1951

Name and address of Appellant: Roosevelt Ward, Jr., 2309 Upperline Street, New Orleans, La.

Names and addresses of Appellant's Attorneys: Alvin B. Jones, 503½ South Rampart Street, New Orleans, Louisiana. John M. Coe, Bell Bldg., Pensacola, Florida.

Offense: Failing to furnish current address to Selective Service Board in violation of Title 50 App. Sec. 462 U. S. Code, being a part of the Selective Service Act of 1948.

85 *Concise statement of judgment or order giving dates and any sentence:* Appellant was adjudged guilty of offense above named on Sept. 10th, 1951 and sentenced to custody of Attorney General of U. S. for imprisonment for the term of 3 years.

Name of Institution where now confined: Parish Prison of Orleans Parish, Louisiana.

I, the above named appellant hereby appeal to the United States Court of Appeals for the 5th Circuit from the above stated judgment.

Dated: Sept. 11th, 1951.

(Signed) ALVIN B. JONES
(Signed) JOHN M. COE
Attorneys for Appellant.

Received a copy of the within notice of appeal this Sept. 11th, A. D. 1951.

(Sgd) RICHARD C. BALDWIN
Asst. United States Attorney for the Eastern District of Louisiana.

Designation of Contents of Record—Filed September 11, 1951

(Omitted in printing)

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86 IN UNITED STATES DISTRICT COURT

Statement of Points—Filed September 11, 1951

In accordance with the provisions of Rule No. 75 (d) Defendant files the following statement of points:

(1) That the court erred in overruling Defendant's motion for judgment of acquittal.

(2) That the court erred in overruling Defendant's motion to strike testimony of failures to furnish Local Board information of changes of address outside of the period of time covered by the indictment.

87 (3) That the court erred in overruling Defendant's motion to strike testimony of the sending and non-receipt of communications outside of the period covered by the indictment.

(4) That the court erred in refusing to give Defendant's requested charge No. 3.

(5) That the court erred in charging the jury that "the intent and motive of this Defendant are the most important factors in this case."

(Sgd) ALVIN B. JONES
(Sgd) JOHN M. COE
Attorneys for Defendant
(Appellant).

Received a copy of the preceding statement of points this Sept. 11th, 1951.

(Sgd) RICHARD C. BALDWIN
Asst. United States Attorney for the Eastern District of Louisiana.

Amended and Supplemental Designation of Contents of Record—Filed September 13, 1951 (Omitted in printing)

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88 **Motion and Order Allowing All Exhibits to Be Sent to Court of Appeals in Their Original Form (Omitted in printing)**

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89 (Clerk's Certificate to foregoing transcript omitted in printing.)

Supplemental Transcript of Record from U. S. D. C.

92 [Caption omitted]

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93 IN UNITED STATES DISTRICT COURT

Supplemental Designation of Contents of Record—Filed November 15, 1951

The Defendant (Appellant) files the following supplemental designation of the contents of the record on appeal herein:

(9½) Include in the record the following motion made on behalf of Defendant at the close of the evidence, to-wit:

"September 10, 1951: 2:00 P.M. After recess:

No. 24,057, C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Mr. Coe: The defendant respectfully moves the Court to instruct the jury to disregard and strike out all of the evidence relating to the failure to notify the Draft Board of changes of address which occurred prior to March 30, 1951, and also move the Court separately to instruct the jury to disregard and strike out all of the evidence relating to non-receipt of communications from the Draft Board prior to March 30, 1951."

(Sgd) ALVIN B. JONES
Alvin B. Jones
403½ South Rampart Street
New Orleans, Louisiana.

94 (Sgd) JOHN M. COE
John M. Coe
202-205 Bell Building
Pensacola, Florida
Attorneys for Defendant
(Appellant)

Affidavit of Service (Omitted in printing)

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95 IN UNITED STATES DISTRICT COURT

Extract from Reporter's Transcript—Filed November 15, 1951

September 10, 1951: 2:00 P.M. After Recess:

Mr. Coe: The defendant respectfully moves the Court to instruct the jury to disregard and strike out all of the evidence relating to the failure to notify the Draft Board of changes of ad-

dress which occurred prior to March 30, 1951, and also move the Court separately to instruct the jury to disregard and strike out all the evidence relating to non-receipt of communications from the Draft Board prior to March 30, 1951.

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96 (Clerk's Certificate to foregoing transcript omitted in printing.)

Proceedings in U. S. C. A. for the Fifth Circuit

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97 **Argument and Submission—March 12, 1952 (Omitted in printing)**

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98 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13802

ROOSEVELT WARD, JR., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Eastern District of Louisiana.

Opinion of the Court—Filed April 5, 1952

Before HOLMES, RUSSELL, and RIVES, Circuit Judges.

HOLMES, Circuit Judge: The appellant was convicted on one count of an indictment charging him with violation of the Selective Service Act of 1948, Title 50 App., Section 465(b), U. S. Code, in that, between the dates of March 30, 1951, and May 31, 1951, he knowingly failed to furnish his local Selective Service Board with an address where mail might reach him, as required by Section 1641.3 of the Selective Service Regulations.

99 On September 18, 1948, appellant registered with a local Selective Service Board in New Orleans, La., giving as his address, and the address of the person who would always know his whereabouts, a certain street and number in that city. He stated his occupation as student, and place of employment as Wilberforce University, Wilberforce, Ohio. On June 7, 1949, a classi-

fication questionnaire was mailed to appellant at the New Orleans address.

On October 18, 1949, the Board wrote to appellant at the New Orleans address, notifying him that it had not received the completed questionnaire, and that he should contact the Board. On March 21, 1950, a duplicate questionnaire was mailed to him at the same address; and on March 30, 1951, the completed questionnaire was returned, with the registrant's address listed as 72 West 107 Street, New York City. In the space provided for the name and address of his employer, appellant wrote, "N. Y. Organizing Committee for a Labor Youth League, 799 Broadway, N. Y. C." A notice of classification was mailed to him on April 28, 1950, addressed to 72 W. 107 Street, New York, N. Y.

On January 15, 1951, an order to report for physical examination was mailed to him at 72 W. 107 Street, and was returned to the Board stamped, "Returned to sender. Removed. Left no address, New York, New York." The Board wrote a letter to Mrs. Dorothy Ward, whose name appellant had given as the person who would always know his whereabouts. On February 2, 1951, in response to the inquiry, she replied that she had not heard from Roosevelt Ward, Jr., and did not know where he was located; that the last address of which she knew was 204 W. 149th Street, New York, N. Y. A letter mailed to Ward at 204 W. 149 Street, New York City, was returned to the Board stamped, "Not at address given. New York City, N. Y."

A letter of inquiry was mailed to Wilberforce University; the university advised that Ward was not registered there, and suggested that he might be a student at the College of Education and Industrial Arts, Wilberforce, Ohio. In reply to a letter of inquiry, the latter stated that Ward had been enrolled there during 1946-1947, but could give no further information. An order to report for induction was mailed to Ward at 72 W. 107 Street, but was returned stamped, "Returned to sender. Moved. Left no address." The Board subsequently reported Ward as delinquent, and he was placed under arrest at 799 Broadway, New York City, by an agent of the Federal Bureau of Investigation.

On the trial of the case before a jury, the defendant testified that he had frequently changed his residence in New York City; that he had not notified the Board of such changes for the reason that he had listed his employer's address in the questionnaire that he had completed and returned to the Board; and that he had relied on that address as fulfilling the requirements of furnishing the Board with an address where mail might reach him. The questionnaire which was returned to the Board by Ward showed his address as being 72 West 107 Street. Under another section of the questionnaire was a space for the name and address of the reg-

istrant's employer, said address being given as 799 Broad-
101 way. Though the Selective Service registration card provided a space for the name and address of the registrant's employer at the time of registration, there was no space for the recordation of any change in the employer's address. There were spaces for the recordation of changes of the registrant's address. Appellant's registration card reflected all the changes of his address that had been reported to the Board, but reflected no change in the address of his employer; thus it still reported his employer as being Wilberforce University. The appellant introduced evidence to show that he had received mail addressed to him at 799 Broadway.

The court below instructed the jury, as requested by the defendant, that if it found from the evidence that the defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he was not guilty, "and you must find a verdict of acquittal." The court denied the defendant's requested instruction No. 3, which was to the effect that, in determining whether or not defendant in good faith furnished or failed to furnish his local board with his address where United States mail might reach him, the jury might take into consideration the provisions of subsection (b), Section 1642.41, of the Selective Service Regulations.[1] Appellant excepted to the court's including the following in its instructions to the jury: "The intent and motives of this defendant are the most important factors in this case."

The appellant has specified as error that the evidence was
102 insufficient to support the verdict; that the court erred in instructing the jury as to motive and intent, and in denying defendant's requested instruction No. 3; and that the court also erred in permitting the jury to consider evidence of other instances where the defendant neglected to give notice of changes of address, and of the mailing and non-receipt of communications outside of the period of time covered by the indictment. In overruling defendant's objections to the admission of evidence of events outside the dates in the indictment, the court below held, "One of the basic elements of this offense is knowledge, and evidence may be obtained which may not come within the dates specified in the indictment but may have very great relevancy on the question." In its instructions to the jury, the court stated that the law sought to punish a person only if he knowingly failed or neglected his duty; that an actual knowledge of the existence of an obligation

[1] "In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address, as shown on Registration card. . ."

and a wrongful intent to evade it is of the essence.[2] We think that the court below was correct in its rulings on the evidence and in its instructions to the jury. Section 462 of the Act specifically provides that "any person . . . who shall *knowingly* fail or neglect to perform such duty," shall be punished. (Emphasis supplied.) See *United States* v. *Sebo*, 101 F. (2) 889, 891; *Weiss* v. *United States*, 122 F. (2) 675, 682, cert. den., 314 U. S. 687; *United*
103 *States* v. *Hoffman*, 137 F. (2) 416, 419; *United States* v. *Weiss*, 162 F. (2) 447.

No error was committed by the court in denying defendant's requested instruction No. 3. Section 1642.41(b) of the regulations, in prescribing the duties of the Board, does not relieve a registrant from the duties imposed upon him. Section 1642.3 of the regulations provides that "Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by the regulations in this part is not a condition precedent to the prosecuting of any person under the provisions of Section 12, Title I of the Universal Military Training and Service Act as amended." See also *Le More* v. *United States*, 253 Fed. 887, 893; *Freeman* v. *United States*, 96 F. (2) 13; *Locke* v. *United States*, 166 F. (2) 449, 451; *Williams* v. *United States*, 170 F. (2) 319, 321, cert. den., 69 S. Ct. 412. As to the question of the sufficiency of the evidence, we think it is plain that there was ample and substantial evidence to support the verdict; and this being so, it should not be disturbed. *Crumpton* v. *United States*, 138 U. S. 361; *Humes* v. *United States*, 170 U. S. 210; *Riddle* v. *United States*, 279 Fed. 216; *Beland* v. *United States*, 100 F. (2) 289; *Pullin* v. *United States*, 104 F. (2) 57; *Sanchez* v. *United States*, 108 F. (2) 735.

AFFIRMED.

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[2] Court's instruction: ". . . The Court accordingly instructs the jury that the Act does not denounce a criminal, every failure to perform a duty imposed by the statute or regulations, but only seeks to punish a person 'who shall knowingly fail or neglect' his duty. There must be a specific wrongful intent. An actual knowledge of the existence of an obligation and a wrongful intent to evade it is of the essence. Before this defendant can be found guilty this jury must be convinced beyond a reasonable doubt not only that he has failed to keep his board advised of the address where mail would reach him but also that he knowingly failed to do so. Unless the element of knowledge on the part of the defendant is found by you as a fact to have existed, or if you have a reasonable doubt of its existence, it will be your duty to acquit the defendant. The intent and motives of the defendant are the most important factors in this case."

104 IN UNITED STATES COURT OF APPEALS

No. 13802

ROOSEVELT WARD, JR.,

v.

UNITED STATES OF AMERICA.

Judgment—April 5, 1952

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

---

105 (Clerk's Certificate to foregoing transcript omitted in printing.)

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106 SUPREME COURT OF THE UNITED STATES

No. 9 Misc. ———, October Term, 1952.

[Title omitted]

* * * * * * * * * * *

Order Allowing Certiorari—October 13, 1952

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 390.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 390

ROOSEVELT WARD, JR.,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONER

JOHN M. COE,
JAMES T. WRIGHT,
ALVIN B. JONES,
RALPH E. POWE,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 390

ROOSEVELT WARD, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA

BRIEF FOR PETITIONER

The opinion of the Court of Appeals is reported at 195 F. 2d 441.

Jurisdiction

Petitioner was indicted in the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, for violation of the Selective Service Act of 1948. The first count of the indictment, charging that the petitioner did knowingly fail to comply with an order to report for induction, was dismissed at the Government's request at the close of the evidence. Trial on the second count, charging that he "did unlawfully and knowingly fail to furnish said local board his correct address where United States mail might be delivered to him, as

required by law", resulted in a conviction and a sentence of imprisonment for three years. This judgment of conviction was affirmed by the United States Court of Appeals for the Fifth Circuit. This Court has granted certiorari to review the judgment of the Court of Appeals. The jurisdiction of this Court is invoked under 62 Stat. 928, 28 U.S.C. 1254 (1), which is Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement of the Case

On September 18, 1948, petitioner registered with Selective Service Local Board No. 45 in New Orleans, giving as his residence address 2309 Upperline Street, New Orleans, Louisiana, where he lived with his parents. (R. 11) Mrs. Dorothy Ward, his mother, was listed as the person who would always know his whereabouts. (R. 11) He gave his occupation as student. He gave as his place of study the last institution at which he had been in attendance, Wilberforce University, Wilberforce, Ohio. (R. 58) This information was entered by the clerk on the line labeled "name and address of employer", this being the most appropriate place on the form. (R. 57)

Thereafter, in 1949, petitioner left New Orleans to work in New York. He planned to live at first with his aunt, Mrs. Vivian Short, and he left that address with his mother. (R. 47, 59) He testified that he did not furnish his local board with his aunt's address because he expected to be there temporarily, and because he had left that address with his mother as his forwarding address. (R. 50)

On June 7, 1949, the board sent a draft questionnaire to petitioner at 2309 Upperline Street, New Orleans. (R. 15, 16) For reasons which do not appear from the record, this questionnaire was not returned to the board (R. 16), and on

October 18, 1949, the board sent a letter of inquiry to petitioner at the New Orleans address. (R. 15, 16)

On March 21, 1950, the board sent a duplicate questionnaire to petitioner at the same address. (R. 15) Petitioner's mother forwarded this questionnaire to him, in care of his aunt at 204 W. 149th Street, New York, N. Y. (R. 42) Petitioner's father, fearing that the forwarded questionnaire would not reach his son in time if he was no longer living with his aunt, thereupon went to New York to make sure that the form reached petitioner. (R. 53, 54) Petitioner had received the questionnaire, however, and on March 30, 1950, he returned it, filled out, to the board. (R. 17)

On this questionnaire he informed the board that his current residence was 72 W. 107th Street, New York, New York, and that the name and address of his employer was "N. Y. Organizing Committee for Labor Youth League, 799 Broadway, N. Y. C." (R. 33)

On April 28, 1950, notice that he had been classified A-1 was sent to petitioner at 72 W. 107th Street (R. 19) and he received this notice. (R. 63)

On January 15, 1951, an order to report for a physical examination was mailed to petitioner at 72 W. 107th Street. (R. 19, 20) This notice came back to the local board stamped, "Returned to sender. Removed. Left No address."

On January 25, 1951, the board wrote petitioner's mother in New Orleans requesting information as to his whereabouts. (R. 21, 22) On January 31, she replied: "In reply to your letter about Roosevelt Ward Jr., I haven't heard from him and don't know where he is located. His last address that I know was 204 W. 149th Street, New York City. Since then I haven't heard from him. Very truly yours, Mrs. Dorothy Ward." (R. 26)

A letter was then mailed to petitioner at 204 W. 149th Street and came back stamped, "Not at address given." (R. 27, 28)

The board then wrote to Wilberforce University, which replied that petitioner was not registered there and suggested that the board write to the College of Education and Industrial Arts, Wilberforce, Ohio. (R. 24) This was done, and that institution replied that petitioner was no longer registered there, but that he had been enrolled during the school year 1946-47. (R. 25)

On March 26, 1951 the board mailed an Order to Report for Induction to petitioner at 72 W. 107th Street which, like the communication sent to the same address two months before, was returned marked, "Return to sender. Moved. Left no address." (R. 29, 36)

The chief clerk of the board conceded (R. 34) that no effort was made to reach petitioner at the Labor Youth League, 799 Broadway, which he had supplied to the board as his place of employment on the questionnaire returned in March, 1950. (R. 33)

The board then reported petitioner to the United States Attorney as a draft delinquent. (R. 30, 31) On May 31, 1951, petitioner was arrested, being found without difficulty at his place of employment, the Labor Youth League, at 799 Broadway. (R. 44) On June 19, 1951 an indictment was returned against petitioner charging, in the first count, failure to report for induction, and in the second count, failure to keep the board advised of his address between the dates of March 30, 1951 and May 31, 1951. (R. 2)

At the trial petitioner took the stand and testified in substance as follows: Throughout his stay in New York housing problems compelled him to change his residence frequently (R. 54, 61, 62) He stayed with his aunt temporarily upon his arrival (R. 50) and thereafter he lived in several

different Harlem rooming houses during the next two years. (R. 52, 54)

Because of the temporary nature of his residences, he used his office address as his principal address for the receipt of mail. (R. 46) He introduced (R. 47) seven postmarked envelopes (Exh. D-1, R.) which had reached him at his business address (c/o Labor Youth League, 799 Broadway, New York City) at the time that his local board was attempting to contact him. Petitioner testified that these letters represented only a small portion of the mail received by him at 799 Broadway. (R. 65)

(The prosecution made no attempt to contradict petitioner's proof that mail in substantial quantity did reach him at his place of employment. At one point the transcript of his cross-examination reads: "Did you ever speak to the boss man?", to which he replied, "No, I never did." (R. 62) The line of questioning in which this question appears was directed to determining why a letter sent by the board to petitioner at his aunt's apartment had not reached him while other mail had reached him there. It is perfectly clear from the context that the question which was asked, and misunderstood by the stenographer, was: "Did you ever speak to the postman?")

Petitioner frankly admitted knowledge of Selective Service regulations requiring that the local board be kept informed of the address at which mail could reach him. (R. 55) He believed, however, that he had complied with this requirement by supplying to the board his office address at which he could easily be reached, and which remained the same from 1949 until the time of his arrest at that address in 1951. (R. 55) This belief was strengthened by the fact that petitioner's roommate was contacted by the board at the latter's place of employment, which led petitioner to believe that this was the practice. (R. 65) It

was because of this belief that he did not furnish the board with his temporary residence addresses. (R. 55-57)

Petitioner relied also on the fact that the board had his parent's address, and that they in turn had his aunt's address. (R. 50, 51) He received mail, including the draft questionnaire, at his aunt's apartment even after he was no longer living there. (R. 60) He called at his aunt's apartment from time to time to pick up mail which had been forwarded to him there. (R. 60)

(The board did send one communication to petitioner at his aunt's address, 204 W. 149th Street, which was returned marked, "Not at address given." (R. 27) The record contains no explanation of why this letter did not get delivered to petitioner's aunt to be held for his next visit, but if counsel may be permitted a surmise, what probably happened is this: The letter from the board (R. 28, Exh. G-14,) was addressed simply "Roosevelt Ward, Jr. 204 W. 149th St."—not "c/o Mrs. Vivian Short." It seems likely that the postman simply forgot that a man named Ward had boarded temporarily in Mrs. Short's apartment, and finding no such name on the mailbox, returned the letter.)

Petitioner was asked if he would have complied with an order to report for induction had he received one and he answered, "I would have immediately complied." (R. 48). He was also asked:

> "If given the opportunity to comply would you be willing now to enter into the performance of your duty?" (R. 48)
>
> "Have you at any time since your release from custody presented yourself at the office of the Draft Board and made an effort to become inducted into the Service?" (R. 48, 49)

But objections to these questions were sustained (R. 49) and petitioner was not permitted to answer them.

At the completion of the proof, the prosecution conceded that the evidence showed that petitioner had in fact not received his notice to report for induction and the Government thereupon abandoned the first count of the indictment. (R. 69) Counsel for defendant moved for judgment of acquittal on the second count, which was denied. (R. 72). The second count resulted in a conviction and a sentence of imprisonment for three years. (R. 83)

Specification of Errors

The Court of Appeals erred in holding that there was sufficient evidence in the record to support the conviction and in holding that the defendant's motion for judgment of acquittal at the close of the case was properly denied.

Summary of Argument

Petitioner was charged with violating a statute and regulations which required each registrant "to keep his local board advised at all times of the address where mail will reach him". Title 32 C.F.R. Sec. 1641.3 Neither the statute nor the regulations specify that the registrant must keep the board informed of his *residence* address. Petitioner advised the board of his office address, which remained constant. The board made no attempt to reach petitioner at this address. The record contained uncontradicted proof that mail in substantial quantity could and did reach petitioner at his office. (R. 47, Exh. D-1, R.) The Government introduced no proof that petitioner's office address was not an address where mail would reach him. Therefore there was no proof whatsoever on an essential part of the Government's case, and submission to the jury was improper. (Point I)

The holding of the Court of Appeals that there was sufficient evidence to sustain the conviction cannot be rec-

onciled with the decision of this Court in *Bartchy* v. *United States*, 319 U.S. 484 (1943), or with the other Court of Appeals decisions interpreting the statute and regulations here involved. (Point II)

The due process clauses of the Constitution have been interpreted to require that criminal statutes define the crime created with sufficient specificity so that the citizen can determine the proscribed conduct. The statute and regulations here involved make no mention of residence address. They advise the registrant only that he must keep the board informed of *the address* where mail will reach him. The court below has in effect held that petitioner was required to keep the board advised of his *residence* address. So interpreted, the statute and regulations, and petitioner's conviction thereunder, violate the due process clause of the Fifth Amendment to the Constitution. (Point III)

The board's last attempt to contact petitioner was made prior to the start of the period covered in the indictment. No effort was made to reach petitioner at any address during the time specified in the indictment. In view of this fact, the Court of Appeals erred in approving submission of the case to the jury. (Point IV)

Point I.

The board made no effort to reach petitioner at the latest employment address supplied by him. Therefore the Government's proof was incomplete, and the case should not have been allowed to go to the jury.

The second count of the indictment, which resulted in judgment of conviction, was based on Sections 12(a) and 15(b) of the Selective Service Act of 1948, 62 Stat. 622, 624 50 U.S. Code (Appendix) Secs. 462(a), 465(b), and

the regulations promulgated thereunder. The statute provides, in pertinent part, as follows:

> "12(a) Any . . . person . . . who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in execution of this title, or rules, regulations or directions made pursuant to this title . . . shall upon conviction . . . be punished by imprisonment of not more than five years or a fine not more than $10,000 or by both such fine and imprisonment . . ."
>
> "15(b) It shall be the duty of every registrant to keep his local board informed as to his current address and changes in status as required by such rules and regulations as may be prescribed by the President."

The regulations prescribed by the President pursuant to this section provide (Title 32 C.F.R. Sec. 1641.3):

> It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him".

(1)

It will be noted that in neither the statute nor the regulation is there any requirement that the address furnished be the registrant's residence address. The prosecution sought to prove the crime charged solely by means of evidence of efforts made to contact petitioner through the mails. But the Government's witness conceded (R. 34) that no effort was made to reach petitioner at his latest business address, (the office of the organization by which he was employed) supplied to the board on his questionnaire in March 1950.

Nor did the Government attempt to prove in any other way that this address, 799 Broadway, New York City, was not in fact an address where mail would reach the peti-

tioner. On the contrary, the record contains uncontradicted and incontrovertible evidence that mail could and in fact did reach petitioner at his office address during the very months when the Board was seeking to contact him. (See seven postmarked letters, R. 47, Exh. D-1,)

Petitioner testified (R. 65) that these letters represented only a small portion of the mail which had reached him at his office, these being the envelopes he happened to have saved. Common experience serves to confirm that testimony. How many of us could produce more than a half dozen old envelopes when called on to do so without notice?

We submit that the Government has not completed its proof in a prosecution of this sort unless it has introduced some evidence bearing on each of the current addresses supplied by the defendant. Obviously this proof does not necessarily have to be by way of attempts to reach petitioner through the mails. The prosecution might prove by testimony that there was no such address, or that petitioner was not known at that address.

But in the case at bar none of these methods was used to prove that petitioner's office address was not an address where mail would reach him. In fact the Government's own witness, an agent of the Federal Bureau of Investigation, testified that he had no difficulty finding petitioner at 799 Broadway on May 31, 1951. (R. 44) This date is the last day of the period covered by the indictment, which charge that between the dates of March 30, 1951 and May 31, 1951 petitioner failed "to furnish said local board his correct address where United States mail might be delivered to him." (R. 2) In other words the Government's own proof showed that petitioner could be reached at 799 Broadway during the period covered by the indictment.

We submit that even if no other factors were present

it would have been error to submit the case to the jury on this proof.

(2)

And other substantial factors *were* present. Petitioner was charged not simply with failing to perform a statutory duty, but with doing so "knowingly". Bearing on this question, petitioner testified that he neglected to keep the board abreast of his current residence address because that address changed frequently, but that he relied on what he believed to be the practice of draft boards to contact registrants at their place of employment if they could not be reached at home. (R. 55) This practice came to petitioner's attention when his roommate was contacted at work by the latter's local board. (R. 65)

That this was in fact the general practice is indicated by the regulations, which provide (Title 32 C. F. R., Sec. 1642.41 (b)):

> "In endeavoring to locate and to secure the compliance of a delinquent *prior to reporting him to the United States Attorney,* the Local Board shall contact the delinquent and the employer, or 'person who will always know' the delinquent's address as shown on Registration Card (SSS Form No. 1), or other person likely to know his whereabouts." (Emphasis supplied.)

And that it was the practice of petitioner's board to attempt to contact registrants at their place of employment is indicated by that board's conduct in this very case. The Board wrote to petitioner at Wilberforce University, the place of employment which he had given them upon registration in 1948. (They did not, however, write to him at the employment address which he supplied more than a year and a half later, on the questionnaire filed in 1950—799 Broadway.)

But in any event the jury could not reach the question whether petitioner committed the offense charged "knowingly" until they had decided whether he committed the objective offense charged—failing to keep his draft board advised of the address where mail would reach him. On this question the prosecution's case was incomplete because no evidence was introduced—and none could have been—that provided any basis for finding that petitioner could not be reached at his office. Therefore the trial court should have granted the motion for Judgment of acquittal at the close of the proof, and the appellate court below should have so held.

(3)

In sum, the prosecution set out to prove that petitioner knowingly failed to keep his local board advised of the address where mail would reach him. This proof consisted, as it naturally would, of evidence as to the efforts made by the local board to reach petitioner through the mails. The Government did not attempt in any other way to prove the crime charged. We submit that there must be at least some evidence bearing on the incorrectness of each address furnished by the registrant to the board (and which has not been superseded by a later address supplied by the registrant). Where, as in the case at bar, the Government offers no evidence at all as to one of the addresses supplied by the registrant (supplied on the board's own questionnaire), it would seem clear that the Government has not proved its case. When the record also contains, as here, proof, in the form of postmarked letters, that mail did reach the defendant at this address, and testimony by defendant that he expected the board to reach him at this address, the evidence seems without question insufficient to support a conviction for failure to keep the board advised of "the address where mail will reach" defendant.

Point II

The holding of the Court of Appeals cannot be reconciled with the decision of this Court in *Bartchy* v. *United States* 319 U.S. 484 (1943), or with other Circuit Court decisions.

(1)

In *Bartchy* v. *United States,* 319 U.S. 484 (1943) defendant, a seaman, was advised by his local board on February 4th that his induction would probably take place in twenty or thirty days. On February 10th he advised the board by letter that he was shipping as a seaman on a voyage from Houston to New York.

> "In the letter he suggested deferment from induction into military service on the ground of employment in the merchant marine and requested that in case deferment was granted it be addressed to 8045 Harrisburg Boulevard, Houston. This was the office of the National Maritime Union and was different from his address, 7543 Harrisburg Boulevard, previously given the board. Bartchy arranged with the Houston office of the union to forward his induction notice to the union's New York office." (319 U.S. at 486).

An induction notice was sent to the Houston office of the union and was forwarded to the New York office but through an error on the part of an official in the New York office was returned to the board. The petitioner was convicted for failing to keep his local board advised of the address where mail would reach him—and sentenced to imprisonment for sixty days. The conviction was affirmed by the Circuit Court of Appeals for the Fifth Circuit, 132 F. 2d 348. This Court granted certiorari, and reversed on the ground that the evidence was not sufficient to support the

conviction. The Court held, through Mr. Justice Reed (Stone, Ch. J., & Roberts, J. dissenting):

> "We think the Government correctly interprets the Act, section 11, and the regulation, section 641.3, not to require a registrant who is expecting a notice of induction to remain at one place or to notify the local board of every move or every address, even if the address be temporary. The Government makes the point, however, that a registrant with knowledge, as here, of the imminence of the posting of the notice is plainly obligated to keep in close communication with the forwarding address. If this suggestion is meant as a rule of law that at his peril the registrant must at short intervals inquire at his last address given to the board, here 7543 Harrisburg Boulevard, Houston, or at his own forwarding address, here the Maritime Union in New York, we are of the view that the Government demands more than the regulation requires. The regulation, it seems to us, is satisfied when the registrant, in good faith, provides a chain of forwarding addresses by which mail, sent to the address which is furnished the board, may be by the registrant reasonably expected to come into his hands in time for compliance.
>
> • • • • • • •
>
> "The petitioner left with the board an address which in regular course of mail should and did bring the notice to the harbor where petitioner was located. . . . On arrival there he went to his forwarding address, inquired for mail, told the official in charge he was expecting an induction notice and arranged for notification to him by the union of its arrival. Bartchy failed to receive the notice because of the mistake of the official of the union . . .
>
> "Petitioner might have been more diligent by telephoning or calling at the union at intervals between the twenty-fifth of February and the tenth of March but we conclude that he was justified in relying upon the efficiency of this experienced organization to ad-

vise him of the arrival of the notice." (319 U.S. at 488-490).

In the case at bar, petitioner did far more than supply the Board with the first link in a chain of forwarding addresses. He furnished an address where mail could, and from the uncontradicted evidence in the record did reach him directly. The board made no attempt to reach him at this address. We submit that under the holding of this Court in *Bartchy* v. *United States, supra,* the evidence in the record was insufficient to support the conviction and the Court of Appeals erred in holding otherwise.

(2)

The interpretation which the court below has placed on Regulation 1641.3 also cannot be squared with the interpretation placed on its identical predecessor by the Court of Appeals for the Second Circuit in two cases which, although not directly in point, take a far different view of the obligations imposed on the registrant.

In *United States* v. *Trypuc,* 136 F. 2d 900 (1943), the only address which defendant gave at the time of registration was that of his brother in Patchogue, New York, where defendant was living at the time. Thereafter he moved to Brooklyn, New York, without advising his board or his brother of his forwarding address. His brother refused to accept letters sent by the board. In reversing a conviction for errors in the charge, the Circuit Court of Appeals wrote, *per curiam,* (136 F. 2d at 902):

> "Similarly in the case at bar the address furnished the board would seem to suffice if Trypuc, in good faith, kept in touch with his brother by telephone while working in Brooklyn and believed that his brother would hold for him any communication sent by the board."

In *United States* v. *Haug*, 150 F. 2d 911 (1945), a unanimous court, Judge Learned Hand writing, held that the defendant could fulfill his duty under the regulations by supplying the board with the address of the Seaman's Church Institute, where mail would be held for him, providing he intended to call there for his mail from time to time.

Point III

The statute and regulations as in effect interpreted by the court below fail to define clearly the crime created and thereby violate the due process clause.

The only theory on which the conviction in the case at bar can be upheld is that the courts below in effect interpreted the statute and regulations to require that the registrant keep the board advised of the *residence* address where mail would reach him. On no other theory could the case have been submitted to the jury where the record contained the Government's concession that no attempt had been made to reach petitioner at his office address (R. 34), no proof of any kind that mail would not reach him there, and undisputed evidence introduced by petitioner that he did receive mail there.

But as has been pointed out neither the statute nor the regulations specify that a *residence* address must be supplied. Therefore the Court of Appeals has in effect interpreted the statute and regulations in such a way as to render them impermissibly vague as part of a statutory scheme creating a crime. This Court has repeatedly held that "Laws which create crimes ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid." *United States* v. *Brewer*, 139 U. S. 278, 288 (1891). A law which fails to define clearly the conduct forbidden or required deprives the defendant of due process. *United States* v. *Cohen Grocery Co.*, 255 U.S. 81 (1921).

In *Connally* v. *General Construction Co.*, 269 U. S. 385 (1926), the Court states the law in these words (at p. 391):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

We submit that the statute and regulation as in effect interpreted by the court below violate the due process clause of the Fifth Amendment by failing to define clearly the criminal offense created.

Point IV

No effort was made to reach petitioner at any address during the period specified in the indictment.

The indictment charged that "between the dates of March 30, 1951 and May 31, 1951" petitioner "did unlawfully and knowingly fail to furnish said local board his correct address where United States Mail might be delivered to him . . ." (R. 2). When the record is examined, it appears that the Government did not prove even one attempt to reach the petitioner during the two-month period covered by the indictment. All of the efforts to contact petitioner were made prior to March 30, 1951.

At the close of the evidence counsel for the defendant moved the trial court

> "to instruct the jury to disregard and strike out all of the evidence relating to the failure to notify the Draft

> Board of changes of address which occurred prior to March 30, 1951, and also move the Court separately to instruct the jury to disregard and strike out all of the evidence relating to non-receipt of communications from the Draft Board prior to March 30, 1951" (R. —).

The motion was denied on the ground that this evidence bore on the question of whether defendant *knowingly* failed to keep his local board advised of the address where mail would reach him (R. 71). But before the jury could reach the question of the defendant's knowledge or intent, they must first have found that during the period covered by the indictment he committed the objective offense charged. On this question, however, there was no direct evidence in the record, since the local board never attempted to reach defendant during the period covered in the indictment.

One can guess—as the jury was required to do—at the results of an attempt to contact petitioner by mail during April and May of 1951. Perhaps the board would have had no greater success than they had had earlier. Or perhaps petitioner's mother would have been able to supply the board with his then current temporary residence address. Or perhaps a letter addressed to petitioner at his aunt's apartment would have reached him, as other mail had (R. 60, 61, 62).

In short, we cannot tell with certainty at what address (other than his office address, which remained constant) mail would have reached petitioner during April and May of 1951, because the board sent him no mail during these months. For this reason, in addition to those discussed earlier, the prosecution failed to prove the offense charged, and the Court of Appeals erred in holding that the evidence was sufficient to support the conviction.

Conclusion

For the foregoing reasons it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 390

ROOSEVELT WARD, JR., PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 47–50) is reported at 195 F. 2d 441.

JURISDICTION

The judgment of the Court of Appeals was entered on April 5, 1952 (R. 51). By order dated May 5, 1952, Mr. Justice Black extended the time for filing the petition for a writ of certiorari to May 22, 1952. The petition was filed on that date, and was granted on October 13, 1952 (R. 51). The jurisdiction of this Court rests on 28 U. S. C. 1254

(1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether substantial evidence was adduced to support the jury's finding, implicit in the verdict of guilt, that petitioner knowingly failed to inform his draft board of a current address where mail would reach him.

2. Whether, despite his failure to keep current, either directly or through forwarding requests, an address specified as the one where mail would reach him, petitioner's duty to notify his board of his change of address was nevertheless fulfilled by his inclusion in a questionnaire of the address of an employer, not as petitioner's own mailing address, but merely as an indication of the character and location of his employer's business for classification status purposes.

3. Whether, after failing to reach petitioner prior to the period set forth in the indictment at any of the addresses stated by petitioner or by others to be the place where mail would reach him, it was incumbent upon his local board to continue to mail letters to petitioner's abandoned addresses during the period set forth in the indictment.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Selective Service Act of 1948 (62 Stat. 622, 624, 50 U. S. C. App.,

Supp. V, 462 (4), 465 (b)) and the regulations issued thereunder are set forth in Appendix A, *infra*, pp. 53–56.

STATEMENT

A two-count indictment was returned in the Eastern District of Louisiana on June 19, 1951, charging petitioner (1) with a knowing failure to comply with an order to report for induction issued on March 26, 1951, and (2) with a knowing failure during April and May 1951 to furnish his local draft board with his correct address where mail could be delivered to him, in violation of the Selective Service Act and the regulations promulgated pursuant thereto (R. 1; Appendix A, *infra*, pp. 53–57). At the close of all the evidence, a motion by the government to dismiss count one which charged a failure to comply with an order to report for induction, was granted (R. 3, 36–37). Petitioner was found guilty on count two and was sentenced to three years' imprisonment (R. 3, 5, 43).

A. The Selective Service procedures and forms

The evidence adduced to support the verdict in this case will be more easily understood in the light of the procedures and forms established by the Selective Service regulations which govern registration, classification, selection, and induction, and which define the duties and correlative rights of the registrant. It may be helpful,

therefore, to set forth in advance of the statement of the evidence an explanation of the procedures and forms established to facilitate the administration of the Selective Service Act and the applicable regulations issued thereunder. The pertinent Selective Service forms, which are incorporated into the regulations (32 C. F. R. 1606.51, *infra*, p. 54), are reproduced in Appendix B, *infra*, pp. 61–74.

1. *Registration.*—Times for registration of persons under the Selective Service Act are announced by Presidential proclamation or other public notice, and suitable places staffed by registrars, frequently volunteers, are provided to accommodate registrants (32 C. F. R. 1612.21–1612.25). Every registrant before being registered enters his "name and place of residence" on a tally sheet (SSS Form 4). Each registrant is then interviewed, and on the basis of his answers, the registrar fills in spaces 1 to 15 on the Registration Card (SSS Form 1, *infra*, pp. 69–70).[1] The regulations provide that "the registrar shall take extreme care that the place of residence of the registrant is correctly entered on line 2 of the Registration Card * * *", and "In describing his place of residence, the registrant shall give the street number thereof, when used, and in every case he shall give the name of the town, township, village, or city, and

[1] See 32 C. F. R. 1613.1–1613.11.

the county and State in which it is located. (32 C. F. R. 1613.12, *infra*, pp. 55–57.)[2] The regulations also explicitly provide as follows (32 C. F. R. 1613.12 (b)):

> The registrar shall make sure that the correct mailing address of the registrant is entered on line 3 of the Registration Card (SSS Form No. 1). The mailing address shall be entered in full on line 3 of the card even if it is the same as the place of residence entered on line 2. It should be made clear to the registrant that he should give as his mailing address an address normally regarded by him as a permanent address at which he would expect to receive important communications. The registrar shall advise the registrant that a correct mailing address is most important because it is the address to which all notices to the registrant will be sent, and that he must advise his local board each time there is a change in his mailing address.

After executing the entries, the registrar causes the registrant to verify them and place his signature in the space provided therefor (32 C. F. R. 1613.13).

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[2] If the place of residence is not within the area of the local board the Registration Card (SSS Form No. 1, *infra*, pp. 69–70) is mailed to a local board having jurisdiction or to the State Director of Selective Service who shall ascertain the proper board (32 C. F. R. 1613.42–1613.44). The Registration Card bears the caption in bold type that "the place of residence given on the line above will determine Local Board jurisdiction."

The next step is the issuance of a Registration Certificate (SSS Form No. 2, *infra*, p. 73). Line 2 of this form calls for the "Place of Residence—Identical with item 2 of Registration Card." No other address is provided for on this form. The form states in bold type on its face that:

> The law requires you to have this Card in your possession at all times for identification and to advise your Local Board of change of address.

All Registration Cards (SSS Form No. 1, *infra*, pp. 69–70) are arranged in alphabetical order by the board to serve as a locator file as well as a record of registration (32 C. F. R. 1621.7). All other papers are placed in an individual file for each registrant, the Cover Sheet (SSS Form No. 101, *infra*, p. 74) of which calls for certain information pertinent to the particular registrant (32 C. F. R. 1621.8). In addition to the name, selective service number, and classification, the Cover Sheet has a space for the address of each registrant, with seven spaces to indicate each subsequent change of address, so that it reflects at all times the current address of the registrant. No space is provided for any address other than the registrant's personal address, and no provision is made for entry of an employer's address.

2. *Classification.*—After the Cover Sheet is prepared (SSS Form No. 101, *infra*, p. 74), a Classification Questionnaire (SSS Form No. 100,

infra, pp. 61–68) is mailed to the registrant, which he is required to complete and return within 10 days after the date on which it is mailed to him, unless he is granted an extension of time by the local board to return it (32 C. F. R. 1621.8–1621.10).[3] Prior to the mailing, the first page of the Classification Questionnaire (SSS Form No. 100, *infra*, p. 61) is completed by the local board with data such as the registrant's name and address. The first paragraph under the instructions on page one notifies the registrant as follows:

> This questionnaire is intended to furnish the local board with information to enable it to classify you. You will receive notice from your local board of your classification.

The fifth item under instructions on page one provides:

> 5. After this questionnaire has been returned, report to your local board at once any change of address, any change in place of employment or occupation, or any other new fact which may affect your classification.[4]

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[3] Provision is made that the Classification Questionnaires "shall be mailed as rapidly as possible, consistent with the ability of the local board to give them prompt consideration upon their return" (32 C. F. R. 1621.9 (a)).

[4] Nowhere in the questionnaire is there any suggestion that that form itself is intended to obviate the necessity of notify-

On the second page of the Classification Questionnaire under the title "Statements of the Registrant," and the subtitle "Identification," the registrant is required to fill in five spaces, the third one calling for his present address. Under this subtitle there is no space for any address other than the registrant's personal address "now". Unlike the Registration Card (SSS Form No. 1, *infra,* pp. 69–70), the questionnaire calls for the present telephone number of the registrant. This information, called for under the heading "Identification," all purports to be for the purpose of identifying the registrant.

On page four of the Classification Questionnaire there is a space for each registrant (other than a full-time student) who is presently employed in non-agricultural occupations to indicate the name and address of his employer. If the registrant is employed on a farm, orchard, or ranch, or is a full-time student, or is unemployed, he need not fill out this blank. Had the petitioner, for ex-

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ing the local board of any change in the address of the registrant. There is, for example, no space in the questionnaire to indicate the "name and address of person who will always know your address," as there is on the original Registration Card (SSS Form No. 1, *infra*, pp. 69–70), and no distinction is made in the questionnaire between the residence address and mailing address, such as is found on the Registration Card.

Clearly, there is no general requirement that the registrant enter his "business address," nor is there any space denominated as such in this form.

ample, remained a student, as indicated on his Registration Card, he would not have been required to fill out Series VIII (p. 4, SSS Form No. 100, *infra*, p. 64), including the information relative to employment, but would have filled out instead Series XI (p. 6, *Ibid., infra*, p. 66) which relates particularly to students. The purpose of the questionnaire is to furnish information to the local board in order that it may be able to determine the registrant's proper classification[5] (R. 10). Thus, information on change of employment is requested because a registrant's employment might affect his classification (R. 21). Some occupational categories are deferred, and a change from such employment may subject the registrant to a change of draft status.[6]

3. *Subsequent procedures.*—After the Classification Questionnaire has been returned to the local board, the board proceeds to classify the registrant. If he fails to return his questionnaire within 10 days, or fails to provide his local board

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[5] This fact is pointed up by the following note at the end of Series VIII of the questionnaire:

"NOTE.—You may attach to this page a statement giving additional information which you think the local board should consider in determining your classification, which statement will then become a part of this questionnaire. Your employer may submit to the local board any information concerning your employment which he thinks the local board should consider in determining your classification."

[6] See 32 C. F. R. 1622.1–1622.65.

with the relevant information concerning his status that he has been requested or is required to furnish, the local board will nevertheless proceed with his classification. (32 C. F. R. 1623.1.)

A Notice of Classification (SSS Form No. 110, *infra*, pp. 71–72) is then mailed to the registrant (32 C. F. R. 1623.4) and such fact is noted on the registrant's Classification Record (SSS Form No. 102). This Notice of Classification, as well as the Registration Certificate (SSS Form No. 2, *infra*, p. 73), must be in the personal possession of the registrant at all times (32 C. F. R. 1623.5). The Notice of Classification bears the following instruction on its face:

> The law requires you: (1) to keep in touch with your local board; (2) to notify it of any change of address; (3) to notify it of any fact which might change your classification; (4) to comply with the instructions on the notice of classification part of this form.

After his classification, if the registrant is otherwise eligible for induction, a Notice to Registrant to appear for Medical Interview (SSS Form No. 219) is, if need be, mailed to him. When he reports, he is examined for physical defects that might disqualify him for active service (32 C. F. R. 1628.1–1629.1).

When the report of the medical examination of a registrant, together with the Certificate of Acceptability (NME Form 62), has been received by

the local board, the original of the certificate is mailed to the registrant, advising him whether or not he is physically acceptable for military service (32 C. F. R. 1628.25 (d) (2)). If a registrant is delinquent in complying with draft regulations or orders, he may be ordered to report for induction whether or not he is physically acceptable (32 C. F. R. 1631.7).

Thereafter, an Order to Report for Induction (SSS Form No. 252) is sent to the registrant, which specifies a date for reporting at least 10 days after the date on which the order is mailed (32 C. F. R. 1632.1, *infra*, p. 57). Registrants who are too far from their local board to report conveniently may secure a transfer to report to a nearer local board (32 C. F. R. 1632.9–1632.10).

B. The evidence adduced to support petitioner's conviction under count 2 of the indictment

Petitioner registered with Selective Service local Board 45, at 320 Magazine Street, New Orleans, Louisiana, on September 18, 1948 (R. 17). His registration card (Ex. G–1)[1] indicates his place of residence as "2309 Upperline, New Orleans, La."; his mailing address as "2309 Upperline, New Orleans, La.", and indicates the "name and address of person who will always know your address", as Dorothy Ward—2309 Upperline, New Orleans, Louisiana. His occupation is listed as

[1] The exhibits admitted in evidence at the trial have been lodged by us with the clerk of this Court.

that of "student,"[8] and his "place of employment or business" as Wilberforce University, Wilberforce, Ohio.[9] (See also R. 6–7.)

At the time of his registration (September 18, 1948) petitioner was not enrolled at Wilberforce University, Wilberforce, Ohio. He had, however, been enrolled at the College of Education and Industrial Arts, Wilberforce, Ohio, during the 1946–1947 school term (R. 12–14). In 1949 petitioner went to New York City, where for two months he lived with his aunt, Mrs. Vivian Short, at 204 West 149th Street (R. 22–23, 27). He did not notify his draft board in New Orleans of this change of address. (R. 22, 26.) He accepted employment with the New York Organizing Committee for Labor Youth League, 799 Broadway, New York City (R. 18, 24).

Thereafter, he moved to 206 West 149th Street and then to 72 West 107th Street, without notifying the draft board of either change of address (R. 23, 28), although he knew that he was required to do so (R. 33).

On June 7, 1949, the draft board sent a Classification Questionnaire (SSS Form No. 100, *infra,*

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[8] He listed as "nature of business," "journalism."

[9] At the time petitioner registered he was told to carry his registration certificate with him at all times and to keep the board advised of his residence (R. 7). The Registration Certificate (SSS Form 2, *infra*, p. 73) on its face bore an instruction that "The law requires you to have this card in your possession at all times for identification and to advise your Local Board of change of address."

pp. 61–68) to petitioner at 2309 Upperline Street, New Orleans (R. 8–9). When it was not returned, the board sent a letter of inquiry to petitioner at the same address (R. 9). On March 21, 1950, a duplicate questionnaire was mailed to petitioner at the same New Orleans address (R. 8–10; see also Ex. G–3, under space marked "Date of mailing questionnaire"). Petitioner's mother forwarded the duplicate questionnaire to him at the address of his aunt (Mrs. Vivian Short), 204 West 149th Street, New York City (R. 23). His father, who did not know where petitioner was living, and who feared that petitioner would not receive the questionnaire, went to New York City to locate petitioner and tell him that the questionnaire had been sent to him. The father learned from the aunt that petitioner was residing at 72 West 107th Street and visited him at that address. (R. 28.)

On March 30, 1950, petitioner returned the questionnaire (Ex. G–5) to his draft board (R. 9–10). Under the heading "Identification" on page 2, he gave as his address, 72 West 107th Street, New York City (R. 10). He executed the question on page 4 of the questionnaire under the heading "Present occupation," [10] and indicated as "the job I

[10] As noted, *supra*, pp. 8–9, not all registrants are required to execute that part of the form denominated "Series VIII—Present occupation," pp. 4–5, SSS Form No. 100, *infra*, pp. 64–65. Had petitioner continued as a student as indicated on his Registration Card he would have not executed the blanks relating to the address of an employer.

am now working at", "Harlem Chairman Labor Youth League"; as the kind of work he did, "organizing youth"; and he stated that he had been employed in this job for four months. Question 5 calls for the name, address, and business of his employer, which petitioner answered as follows:

5. My employer is:

"N. Y. Organizing Committee for Labor Youth League"

(Name of organization or proprietor, not foreman or supervisor; write "self" if self-employed.)

"799 Broadway, N. Y. C."

(Address or place of employment—Street or R. F. D. Route, City, and State.)

whose business is:

"Organizing"

(Nature of business, service rendered or chief product.)

Petitioner was not asked for a "business address," nor was he asked whether he worked at the same address as his employer.[11] The purpose of the questionnaire was to furnish the local board with information by which the registrant's proper classification could be determined (R. 10, 21).

On the Cover Sheet to petitioner's Selective

[11] Frequently a registrant does not work at the same place, as the address of his employer. A different address of the employer in the questionnaire therefore would not necessarily be a signal to the local board to change the 10th item of the Registration Card (SSS Form No. 1, *infra*, p. 69) which calls for the "Place of employment or business" [of the registrant].

Service file (Ex. G–3) the original address taken from his Registration Card (Ex. G–1) was 2309 Upperline Street, New Orleans. This is penciled out in red pencil, and under the first blank for "changes of address" (the only change so indicated) the address at 72 West 107th Street, New York City, was written in on March 30, 1950, on receipt by the local board of the questionnaire (R. 8, 10, 16; see also notation on Ex. G–3). Nowhere on the the Cover Sheet is there any data called for relating to the address of an employer (see R. 18).[12]

On April 27, 1950, petitioner was classified A–1 (R. 10). On April 28, a notice of this classification was sent to him at 72 West 107th Street, New York City, the address indicated on his Cover Sheet as being his current address (Ex. G–3; see also R. 10). He received this notice (R. 33). This Notice of Classification (SSS Form 110, *infra,* p. 71; see also Ex. G–6) bore a prominent notation on its face that "the law requires you, (1) To keep in touch with your local board; (2) to notify it of any change of address * * *."

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[12] In our brief in opposition we erroneously indicated that the name and address of petitioner's employer as originally indicated on his Registration Card had been written on the Cover Sheet (Ex. G–3) (see Br. in Opp. pp. 3–4). Not only was no address of an employer written on the Cover Sheet but there is no space on this or any of the forms to indicate a change of an employer's address.

A few days later petitioner moved to 680 St. Nicholas Avenue, New York City (R. 23, 28–29). He did not notify the draft board of this change of address although he knew he was required to do so (R. 28–29). At the trial petitioner could not recall whether he had left a forwarding address at any of the places from which he moved (R. 32–33).

On January 15, 1951, the draft board mailed to petitioner at the 72 West 107th Street address an order to report for a physical examination (R. 11–12). It was returned to the local board stamped "Returned to sender. Removed. Left no address" (R. 11).

The local board then, on January 25, 1951, wrote petitioner's mother, Mrs. Dorothy Ward (who was named on the registration card as the "person who will always know your address"; see Ex. G–1) requesting information as to petitioner's whereabouts (R. 12–14). She replied (Ex. G–13) on January 31, 1951: "I haven't heard from him and don't know where he is located. His last address that I know was 204 West 149, New York City. Since then I haven't heard from him" (R. 14). On February 2, the day the letter was received by the local board, this tentative address was written on the face of his Cover Sheet (Ex. G–3) lightly in pencil (R. 15).

An attempt was made to reach petitioner at the address given by his mother for the purpose of

cautioning him that he had failed to notify the board of his change of address, and to advise him that an order to report for induction would follow. This letter was returned stamped "Not at address given" (R. 15).

The local board then wrote to Wilberforce University, Wilberforce, Ohio, which petitioner's Registration Card (used as a locator card by the local board; Ex. G–1) showed to be the "place of [his] employment or business." Wilberforce University replied that petitioner was not registered there, and suggested that the board write to the College of Education and Industrial Arts, Wilberforce, Ohio (R. 13). On March 6, 1951, the local board wrote to the College of Education and Industrial Arts, Wilberforce, Ohio, requesting information as to petitioner's whereabouts (R. 13–14, 19). A reply was received by the board on March 19, 1951, stating that petitioner had been enrolled there during the school year 1946–1947, but that the institution was unable to furnish any more information about him (R. 14).

On March 26, 1951, the local board mailed to petitioner at the 72 West 107th Street, New York City address, an Order to Report for Induction (Ex. G–16), which was returned stamped "Return to sender. Moved. Left no address" (R. 15, 19).

The local board then reported to the United States Attorney that petitioner was a draft

delinquent (R. 16–17). He was arrested by F. B. I. agent Maloney on May 31, 1951, at 799 Broadway, New York City, where he worked (R. 22–23). He had worked at this address for the Labor Youth League from 1949 until his arrest (R. 24).

At the trial, petitioner, the only defense witness, admitted that he knew he was required to keep the local board informed of his current address (R. 29–30, 33), but that he did not report changes in his address (R. 26–29). He testified that he relied on the board to contact him at his employer's address because his roommate had been contacted at his place of employment by his draft board (R. 34). He testified that he was in the habit of receiving mail at his employer's address, 799 Broadway, New York City, and introduced several envelopes addressed to him at this address (R. 24–25). He admitted that he never spoke to his employer about receiving mail there (R. 32).

Petitioner's counsel introduced in evidence envelopes addressed to petitioner at 204 West 149th Street, New York City, where his aunt lived (R. 25). Petitioner testified that he had informed his aunt to keep his mail (R. 32), and that he picked it up from time to time (R. 31–32), but he did not explain why the letter from his local board was returned. He testified that he knew that the local board had the 204 West 149th Street

address for he had received mail from the board at that address (R. 31).[13]

Petitioner contended that his mother always knew where he was living (R. 27), and that her failure to properly inform the board may have been due to excitement (R. 36). He admitted, however, that his father did not know his address in 1949 when he went to New York City to inform petitioner that the Classification Questionnaire had been sent to him (R. 28). Petitioner testified that as far as he knew the draft board's letters constituted all of the mail that he did not receive (R. 36).

The District Court carefully instructed the jury that in order to convict petitioner it must find that petitioner knowingly and intentionally violated the regulation requiring him to keep his local board advised of an address where mail would reach him. The court charged (R. 40–41):

> * * * the Court accordingly instructs the jury that the Act does not denounce as criminal, every failure to perform a duty imposed by the statute or regulations, but only seeks to punish a person "who shall knowingly fail or neglect" his duty. There must be a specific wrongful intent. An actual knowledge of the existence of an ob-

[13] The 204 West 149th Street address was furnished the local board by petitioner's mother on February 2, 1951 (R. 14), after the board began its endeavors to inform petitioner of the order to report for a physical examination. No letter from the Board addressed to petitioner at this address was received or accepted, by him.

> ligation and a wrongful intent to evade it is of the essence. Before this defendant can be found guilty this jury must be convinced beyond a reasonable doubt not only that he has failed to keep his board advised of his address where mail would reach him but also that he knowingly failed to do so. Unless the element of knowledge on the part of the defendant is found by you as a fact to have existed, or if you have a reasonable doubt of its existence, it will be your duty to acquit the defendant. The intent and motives of the defendant are the most important factors in this case.
>
> * * * * *
>
> * * * Before you can convict the defendant you must find from the evidence beyond a reasonable doubt that he had both knowledge of, and a specific intent to commit the offense charged.

In addition, the court charged, as requested by petitioner, that (R. 42):

> * * * if you find from the evidence that the defendant furnished to said Board one or more of his correct addresses at which mail would be delivered to him, he is not guilty, and you must find a verdict of acquittal.

On appeal, the Court of Appeals affirmed petitioner's conviction and sentence, holding that no error had been committed at the trial and that there was ample and substantial evidence to support the verdict (R. 50).

SUMMARY OF ARGUMENT

I

The jury found, under proper instructions as to the law, that petitioner had knowingly failed, during the period charged in the indictment, to keep his local Selective Service Board informed of an address where mail would reach him, and that he had a specific intent not to perform that duty. This finding is supported by ample evidence that he not only failed to furnish the board with his current address during the period set forth in the indictment, but that he had persistently failed to perform that duty on other occasions over a long period of time previous thereto. Selective Service regulations and forms, as well as the admonition of the registrar at the time of registration, brought to petitioner's attention his unequivocal duty to furnish his board with an address at which or through which he could be promptly notified of each stage of the Selective Service procedure. Nevertheless, on repeated occasions, he not only failed to notify his board of changes of address, but he failed to leave forwarding addresses through which he could be located. After considerable effort, over a period of several months, he was located through independent information, and a questionnaire was then given to him on which he indicated, among other questions submitted for the purpose of

classification, an address as his mailing address at that time, and in connection with a question as to employment, listed his employer's address. Later, after a subsequent move when he failed again to notify his board of his current address or leave a forwarding address (and such failures were not corrected during the period charged in the indictment), his board made repeated attempts to locate him through all of the addresses which his file showed to be his own, including the one indicated as his current address on his Classification Questionnaire, and all the addresses shown on his Registration Card and Cover Sheet. Having failed to locate him, the board reported his delinquency to the United States Attorney and arrest followed. His contention that he was ignorant of the law and assumed that his supplying the address of an employer on a Classification Questionnaire would fulfill his duty to keep the board informed as to his address, is foreclosed by the jury's finding that petitioner knowingly, and with intent to do so, failed to furnish the board with his current address during the period set forth in the indictment.

II

There is no substance in petitioner's contention that as a matter of law he has satisfied his duty as a registrant to keep his board informed of his own current address if, somewhere in his

file there is an employer's address through which he might be located after other efforts of the board have failed to locate him through the addresses last indicated by him as his own. This proposition has no support in the statute or regulations. The obvious purpose of the statute and regulations is to place on the registrant the burden of furnishing his own mailing address to the board, and to make his failure to perform that duty punishable. There is no legal basis for the theory that the board must exhaust all leads which can possibly be found to locate a registrant before he can be charged as a delinquent. Such a burden, if shifted to the board would not only slow down the whole procedure of registration, inspection, classification, selection, and induction, but would put a premium on laxity in the performance of a registrant's duty during a critical period of war emergency.

The cases cited by petitioner, including *Bartchy* v. *United States,* 319 U. S. 484, fail to establish his position. They involved the question whether a mailing address, given as the address where mail would reach the registrant, was in fact such an address. Those cases have no bearing on the facts in the instant case because here concededly no current mailing address was furnished to the board.

The experiences with delinquents during World Wars I and II indicate that the regulations were

framed to discourage delinquency by providing that each registrant keep current an address, denominated as such, in the files of his local board through which he can be reached without undue delay.

III

Petitioner's contention that the evidence was insufficient because the local board did not send mail to him during the period March 30, 1951, to May 31, 1951, charged in the indictment, is but an attempt to reargue the evidence. By the beginning of this period, the local board had exhausted every address indicated as petitioner's own mailing address in petitioner's file. It was clearly not incumbent on the board to continue to send mail to addresses indicated by petitioner after it had ascertained that he was no longer at such places, and had left no forwarding addresses when he had moved. The evidence shows that during the period set forth in the indictment petitioner failed, as he had previously done on several occasions, to furnish his board a mailing address through which he would receive his mail directly or by the forwarding process.

ARGUMENT

I

THE QUESTION WHETHER PETITIONER KNOWINGLY FAILED OR NEGLECTED "TO KEEP HIS LOCAL BOARD INFORMED AS TO HIS CURRENT ADDRESS" IS A QUESTION OF FACT WHICH HAS BEEN FINALLY RESOLVED AGAINST HIM BY THE JURY UNDER PROPER INSTRUCTIONS

Under the trial court's instructions, the jury, in order to convict petitioner, had to be convinced beyond a reasonable doubt "not only that he has failed to keep his board advised of his address where mail would reach him but also that he knowingly failed to do so." The trial judge charged that there must have been a specific wrongful intent to evade a known obligation.

We submit that, as the court below held (R. 50), "* * * it is plain that there was ample and substantial evidence to support the verdict; and this being so, it should not be disturbed."

The evidence plainly shows that petitioner over a long period of time knowingly failed to notify his draft board of his then current address, failed to leave forwarding addresses through which he could receive his mail (and such failures were not corrected during the period charged in the indictment), and failed even to notify his parents of his whereabouts. The reasonable inference to be drawn from this evidence of prolonged refusal to perform the affirmative duty of notifying his

board of his current address, is that petitioner purposefully endeavored to make it difficult or impossible for letters from his board to reach him in order that he might delay, or possibly avoid, being called for military service.

The Selective Service regulations impose a duty on each registrant "to familiarize himself with the rules and regulations governing registration and to comply therewith" (32 C. F. R. 1611.6 (a), *infra*, pp. 54–55). They also require that the registrar fully instruct each registrant as to what information is required and to make certain that each registrant fully understands what information he is under a duty to furnish (32 C. F. R. 1613.11 (c), *infra*, p. 55). The registrar is required to "take extreme care that the place of residence of the registrant is correctly entered on line 2 of the Registration Card * * *", and "shall make sure that the correct mailing address of the registrant is entered on line 3 * * *" (32 C. F. R. 1613.12, *infra*, pp. 55–56). Lest any doubt arise as to the function of the mailing address, the regulations provide (32 C. F. R. 1613.12 (b), *infra*, pp. 56–57):

> * * * It should be made clear to the registrant that he should give as his mailing address an address normally regarded by him as a permanent address at which he would expect to receive important communications. The registrar shall advise the registrant that a correct mailing address is most important because it is the

> address to which all notices to the registrant will be sent, and that he must advise his local board each time there is a change in his mailing address.[14]

At the time petitioner registered with a local Selective Service board in New Orleans, Louisiana, on September 18, 1948, he was informed by the registrar that he must keep the board advised of his residence. His Registration Certificate, which he was required to have in his possession at all times after receipt, informed him in bold type that the law required him to "advise your Local Board of change of address."[15]

Yet, shortly after registration, petitioner, with the admonition as to his duty presumably still fresh in mind, moved to New York City without notifying his local board in New Orleans of this

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[14] Section 15 (b) of the Selective Service Act (*infra*, p. 53) requires the registrant to "keep his local board informed as to his current address and changes in status * * *," and the Selective Service regulations simply provide (32 C. F. R. 1641.3, *infra*, p. 58) that "it shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him."

This regulation also provides that "the mailing of any order, notice, or blank form by the local board to a registrant *at the address last reported by him* to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not." [Italics supplied.]

[15] This form, as do other Selective Service forms, imposed upon petitioner requirements which are made part of the Selective Service regulations by reference (32 C. F. R. 1606.51, *infra*, p. 54).

change of address. Thereafter, on two other occasions, when he moved his residence in New York, he failed to notify the local board of any change of address from the New Orleans address he had originally indicated on his Registration Card.

It took nearly ten months for the Selective Service Board to place a Classification Questionnaire in petitioner's hands[16]—a function that is usually performed in a few days.[17] On March 30, 1950, petitioner returned his Questionnaire. Upon its receipt, the registrar of the local board took the current address indicated on page 2 of this Questionnaire (Ex. G–3) and put it on petitioner's Cover Sheet under the first space of seven provided for changes of the registrant's address.

At this juncture petitioner's records in the board's files plainly reflected his address as 72

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[16] A questionnaire was mailed to him on June 7, 1949, at his "mailing address," 2309 Upperline Street, New Orleans, and when no response came from it, a letter of inquiry was addressed to him on October 18, 1949, at the same address. On March 21, 1950, a duplicate questionnaire was mailed to the New Orleans address, which petitioner's mother forwarded to his aunt in New York (R. 8–10, 23). His father, who did not know where petitioner was living, went to New York from New Orleans to tell him that the questionnaire had been sent to him. The father only learned his son's whereabouts on arrival through the aunt. The father then visited the son at 72 West 107th Street (R. 28).

[17] Unless the local board grants an extension of time on reasonable request therefor, the registrant must return the questionnaire "within 10 days after the date on which it is mailed to him" (32 C. F. R. 1621.10).

West 107th Street, New York, New York, and there was nothing to indicate to the contrary. True, he had furnished on page 4 of his Questionnaire the name of an employer for whom he indicated that he had worked for the previous four months, and had given the address of this employer. But in no place did he indicate that he intended to use the address of his employer as his own mailing address. Although petitioner conceives of the primary question here presented as being whether a "business address" will suffice to satisfy the address-notification requirement (Pet. Brf. 8–9), petitioner was not asked by the Questionnaire what his "business address" was. Had he been unemployed, a student, or a farm worker, he would have had no occasion even to supply the address of an employer.[18] Clearly, such information, which is sought purely for purposes of classification (and not to supply notice of a change of address),[19] did not effectively notify the local board that thenceforth his mailing ad-

[18] The nature of employment is a question highly pertinent to classification. A change of employment might give rise to a termination of eligibility for deferment, or might provide grounds for the granting of a deferment or exemption from military duty (see 32 C. F. R. 1622.22–1622.24).

[19] It is apparent on looking at the pertinent Selective Service forms, Appendix B, *infra*, pp. 61–74, that a registrant's address would ordinarily be ascertained by recourse to two sources, (1) the Registration Card filed in a locator file by the board, and (2) the Cover Sheet which is itself filed in sequence, and which, by providing spaces for changes of address, reflects at all times the registrant's current address.

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dress would be the same as that of his employer. The instruction concerning registrants' employers, like those contained in other Selective Service forms, must be read in its own context. Cf. *United States* v. *Wain*, 162 F. 2d 60, 64 (C. A. 2), certiorari denied, 332 U. S. 764. Nowhere in his file is there any indication that petitioner desired to use the employer's address as his personal address, or that the employer had consented to turn mail over to him. On the contrary, petitioner indicated on page two of his Questionnaire that "My address now is 72 West 107th Street," New York City. That is the address which was put on his Cover Sheet as a "Change of address" (Ex. G–3).[20]

On April 27, 1950, petitioner was classified A–1, and was so notified on April 28th by a notice sent to him at 72 West 107th Street which he received there. Again he was warned by instructions printed in bold type on the notification form (Ex. G–6) that: "the law requires you, (1) to keep in touch with your local board; (2) to notify it of any changes of address; * * *". Only a few days later he moved to 680 St. Nicholas Avenue, New York City and again failed to notify his draft board of this change of address (R. 29).

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[20] At the time petitioner executed his Questionnaire, Instruction No. 5 on its face advised him (SSS Form No. 100, *infra*, p. 61): "After this questionnaire has been returned, report to your local board at once any change of address * * *."

From January 15, 1951, to March 26, 1951, his local board attempted to contact petitioner but was unsuccessful. On January 15, 1951, an order to report for a physical examination was sent to him at 72 West 107th Street, which his Cover Sheet showed to be his then current address. It was returned stamped "Returned to Sender. Removed. Left no address." His mother (indicated on his Registration Card as the person who would always know his address) did not know his address or whereabouts. Other attempts were made to find him but to no avail. Finally, on May 31, 1951, he was arrested by the F. B. I. as a draft delinquent.

We do not understand that petitioner now urges that he kept his local board informed of his changes of address. He admitted that he knew the regulations required him to do this and conceded that he had failed to do so. He knew that the local board understood that his mailing address was 72 West 107th Street, for he admitted that he had received his Classification Notification at that address. Yet he changed his residence (and mailing address) without informing the board or leaving a chain of forwarding addresses through which he could be reached.

His contention is that despite such failure he satisfied the duty imposed by law upon him when he supplied an employer's address through which his local board might have eventually reached

him after it had ascertained that he was no longer at the mailing address that he had previously furnished and designated as such to the board. This, we submit, is merely a reargument of the factual issue resolved by the jury, *i. e.*, "that he has failed to keep his board advised of the address where mail would reach him," and "that he knowingly failed to do so" (R. 40). The evidence is convincing that over a long period of time, in addition to the period covered by the indictment, petitioner continually failed to perform an affirmative duty which the law imposed on him and which as an educated man, he must have understood.

The Selective Service regulations are not couched in terms that make them traps for the unwary; nor are they so technical that all registrants cannot understand their clear purport. It is difficult to conceive how petitioner could have been under the misapprehension that the furnishing of his employer's address in the Questionnaire would satisfy the requirement of the regulations that he "keep his local board advised at all times of the address where mail will reach him" (32 C. F. R. 1641.3, *infra*, p. 58). For many months prior to his execution of this Questionnaire, the local board had not been correctly informed as to petitioner's address or place of employment. And after he returned his Questionnaire, which had reached him only

after long delay and great effort on the part of his local board, that board reasonably enough attempted to reach him through the address indicated on his Cover Sheet as his mailing address (Ex. G–3). Having failed to locate him through that address, the board then tried to locate him through his mother, the person whom he had indicated on his Registration Card as the one who would always know his address. Thereafter, the board attempted to locate him through the address supplied by his mother, but again was unsuccessful. Other unsuccessful endeavors were made to locate him through the university that he had indicated on his Registration Card (Ex. G–1). Many months were consumed in abortive attempts to find petitioner, who at all times had been apprised of his duty to keep in contact with his draft board, and whose record, from start to finish, indicates a consistent pattern of reckless disregard of, and willful refusal to comply with, reasonable regulations.

The board had sent petitioner's Notice of Classification (Ex. G–6) to 72 West 107th Street, and he admittedly received it there (R. 33). The fact that he knew that his board had contacted him at this address, negatives his repeated assertion (see, *e. g.*, Pet. Brf. pp. 8–9, 11) that he believed that the giving of his employer's address satisfied the requirement of the regulations. That other persons sent letters to him at the address of his employer (Ex. D–1) is irrelevant,

because, as stated above, he never indicated and the evidence sustains an inference that he never intended that his Selective Service notices should be sent to the address of the employer. The situation of his roommate (Pet. Brf. p. 11) has no bearing on the instant case—the roommate may well have given his employer's address as his own mailing address. Nor does the situation of his roommate rebut the jury's finding that this petitioner knowingly and with specific intent to do so, failed to notify his board of an address where mail would reach him.

No plea of ignorance of the law can overcome the explicit proof of petitioner's failure to furnish his board with a current address where mail would reach him (either directly or by forwarding), in the face of the jury's finding, under careful and proper instructions of the trial judge, that his knowing failure to inform the board was accompanied by a specific intent not to furnish such address. The existence of intent is, of course, a question for the jury (*United States* v. *Hoffman*, 137 F. 2d 416, 419 (C. A. 2), and petitioner's claim that he honestly believed (when he supplied the address of an employer in his Questionnaire) that he was fulfilling his duty to supply his board with a current address, is foreclosed by their finding. *Morissette* v. *United States*, 342 U. S. 246, 273–276; *United States* v. *Weiss*, 162 F. 2d 447 (C. A. 2), certiorari denied, 332 U. S. 767. See also *United*

States v. *Wain*, 162 F. 2d 60, 64 (C. A. 2), certiorari denied, 332 U. S. 764. A jury may reject defense testimony that an act in violation of law was committed under an honest mistake of law, where the Government's evidence supports an inference of a criminal intent. *United States* v. *Virzera*, 149 F. 2d 188, 189 (C. A. 2), certiorari denied, 326 U. S. 721. The direct evidence of petitioner's knowing failure to keep his local board informed of his current mailing address during the period charged in the indictment, supported by the inference of his intent to violate the law which is implicit in the uncontroverted proof that he had persistently failed to so inform the board on previous occasions, furnishes ample evidentiary basis for the jury's verdict. The probative sufficiency of the evidence has the support of both the trial court and the court below. In the circumstances, there is no warrant for disturbing the jury's finding here. *Delaney* v. *United States*, 263 U. S. 586, 589–590; *United States* v. *Johnson*, 319 U. S. 503, 518.

II

PETITIONER'S OFFENSE IS NOT EXCUSED BY ANY FAILURE OF THE LOCAL BOARD TO EXHAUST EVERY POSSIBLE LEAD THROUGH WHICH IT MIGHT HAVE LOCATED HIM

Petitioner urges (Pet. Brf. pp. 8–10) that as a condition precedent to the present prosecution it was incumbent on his local board, after ascer-

taining that he could not be reached at or through the mailing address he had previously supplied, to search him out through the address of his employer included in his Questionnaire filed a year before with numerous papers in his Selective Service file. It is difficult to perceive how this defense could be an effective answer to his own willful disobedience of the positive requirement that he keep his local board advised of his *own* current address. The offense was complete when, during the period of time set forth in the indictment, petitioner failed to keep his local board advised of a mailing address, designated as such, where his mail would reach him directly, or through a forwarding arrangement by which it might reasonably be expected to be in his hands in time for compliance with the board's orders.

Having failed to perform his duty, petitioner cannot thereafter complain of some omission of his board in failing to follow all possible leads in tracking him down. He should not be permitted to strew confusion in his own wake, and then contend that he should be absolved from liability to prosecution because the local board did not tolerate more delay by exhausting every conceivable source through which he might have been located, or by gleaning from his papers, and making use of, every clue that might eventually have disclosed his whereabouts. The local board was under no such duty. The Selective Service Regulations, being designed to operate

during a period of national emergency, demand that each registrant keep his board informed of an address through which he can be quickly reached for service. This duty is clear. Its mandate is framed with preciseness in order to preclude the studied evasions of recalcitrants who attempt to put themselves beyond the ability of their boards to reach them.

This duty is not to be evaded through interpretations which permit such negative action or indirect compliance by a registrant as to cause inordinate delays and render nugatory the effectiveness of the Act and regulations. Thus, a registrant may not enlist in a friendly foreign army and thereafter ignore his address-notification duty on the assumption that he is qualified for exemption from service, even if the enlistment would so qualify him. *Stumpf* v. *Sanford,* 145 F. 2d 270 (C. A. 5), certiorari denied, 324 U. S. 876. Nor may a registrant avoid actual notification with impunity by failing to call for his mail at the address last furnished by him. *United States* v. *Haug,* 150 F. 2d 911 (C. A. 2). Nor will a delinquent registrant be permitted to use as a defense a procedural error made by his board, which does not underlie or excuse his own nonfeasance. *United States* v. *Fratrick,* 140 F. 2d 5 (C. A. 7); see also *United States ex rel. Bergdoll* v. *Drum,* 107 F. 2d 897, 900–901 (C. A. 2), certiorari denied, 310 U. S. 648. The same considerations likewise compel the conclusion that

the supplying by a registrant of information which does not purport to be his own address will not excuse his failure to perform the positive duty imposed on him by the Selective Service Act and regulations to keep his board informed of his own current address.

The regulations specify the steps to be followed when a registrant has become a delinquent. There is an entire part (32 C. F. R. 1642) devoted to the subject, one of the directory provisions of which (1642.41 (b), *infra*, p. [illegible]) reads in pertinent part, as follows:

> In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the local board should contact the delinquent and the "employer" or "person who will always know" the delinquent's address, *as shown on the Registration Card* (SSS Form No. 1), or any other person likely to know his whereabouts. * * * [Italics supplied.]

The Selective Service Board in the instant case followed this procedure generally in an attempt to locate petitioner.[21] But it was not mandatory

[21] The board, in addition to other sources, directed a letter to Wilberforce University falsely given by petitioner as the name of an employer on his Registration Card (Ex. G–1). Finding that petitioner had never enrolled there, the board then, at the suggestion of Wilberforce University, directed a letter to the College of Education and Industrial Arts, Wilberforce, Ohio, where he had been enrolled during the 1946–1947 school term but which, the board learned, he had long since left.

upon the board, or a condition precedent to the prosecution of petitioner that it follow any particular procedure in attempting to locate him after it had learned that he had repeatedly failed to supply his current address and was again delinquent. Another regulation under part 1642 of Title 32, *viz,* § 1642.3, *infra,* p. 59, relating to delinquents, provides as follows:

> *Compliance with procedures of this part not condition precedent to prosecution.* Compliance by a local board or any other agency of the Selective Service System with any or all of the procedures prescribed by this part is not a condition precedent to the prosecution of any person under the provisions of section 12 of the Selective Service Act of 1948.

Consequently, the failure of the local board to follow up every clue to petitioner's whereabouts, to be found in his file or elsewhere, before reporting petitioner's delinquency to the United States Attorney, would not excuse petitioner's own violation and would not constitute a valid defense. Cf. *Seele* v. *United States,* 133 F. 2d 1015, 1020 (C. A. 8).

Petitioner urges, in support of his contention that the supplying of an employer's address suffices to fulfill his address-notification requirement, the decision of this Court in *Bartchy* v. *United States,* 319 U. S. 484, where it was held that the address-notification requirement is satisfied

(p. 489) "when the registrant, *in good faith,* provides a chain of forwarding addresses by which mail, sent to the address which is furnished the board, may be by the registrant reasonably expected to come into his hands in time for compliance." [Italics supplied.] Since there is evidence that petitioner in the instant case neither provided such a chain of forwarding addresses, nor acted "in good faith," that holding has no relevance here.[22] Nor do *United States* v. *Trypuc,* 136 F. 2d 900 (C. A. 2), and *United States* v. *Haug, supra,* also cited by petitioner, support his position. In the *Trypuc* case, the Court of Appeals reversed a conviction for knowingly failing to keep a draft board advised of an address, where the trial court had omitted to instruct the jury that they must find that the defendant "knowingly" failed to

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[22] The *Bartchy* case recognized the practical fact that persons who are highly mobile, as are sailors, cannot be expected to supply a fixed address when their occupation demands that they remain in one place only a very short time. Cf. *United States* v. *Haug, supra.* All that is demanded is that the last address that they supply be one through which mail will be forwarded to them in reasonable time for compliance.

The Selective Service regulations established at the time of World War I were similarly construed. They were held not to demand that registrants remain in their homes or places of legal residence until drafted into the service, but only that they keep in touch with their local boards and supply a current address which insured prompt compliance with any necessary orders. *United States ex rel. Feld* v. *Bullard,* 290 Fed. 704 (C. A. 2), certiorari denied, 262 U. S. 760; *United States* v. *Block,* 262 Fed. 205 (D. Ind.).

keep his board so advised.[23] The *Haug* case involved a Norwegian sailor who indicated as his address on his Registration Card the "Seamen's Church Institute" in New York where he lived at the time but from whence he shipped out to sea, being absent most of the time during the periods relevant to the case. Haug's defense was that the Selective Service notifications delivered to the Institute were sent under an erroneous name and would not have been delivered to him even had he called for his mail. The Court of Appeals held that the issue of whether, under such circum-

[23] The Court of Appeals for the Second Circuit in *United States* v. *Guertler*, 147 F. 2d 796, certiorari denied, 325 U. S. 879, in distinguishing its holding from *Trypuc*, said (p. 797): "The defendant urges as another basis for reversal the failure of the judge to charge that the jury was to consider 'whether the defendant in good faith kept or intended to keep in touch with his sisters and believed that they would hold for him any communication sent by the selective service board.' Here the defendant relies on our decision in *United States* v. *Trypuc*, 2 Cir., 136 F. 2d 900. But the error we found there was the charge of the district judge to the effect that the failure of the defendant to notify the board of his correct address was a crime. We pointed out that the issue was not the correctness of the address, but 'whether the appellant "knowingly" failed to keep the Board advised of an address where mail would reach him.' In the case at bar, the judge read the regulation to the jury, and further pointed out that he was 'not concerned with what his address is * * * it is for you to determine whether he complied with this regulation or whether he wilfully and knowingly and unlawfully failed to comply with it.' The trial judge, having sufficiently stated the applicable rule of law, did not err in failing to charge as the defendant asserts he should have charged."

stances, Haug had kept his draft board advised, depended on whether it was Haug's intent to call at the Institute for his mail from time to time.

The *Haug* case, however, and indeed the *Bartchy* and *Trypuc* cases also, involved the question whether the address actually given as the registrant's mailing address was in fact an address where he could reasonably expect that mail would reach him. Here, the question is whether, despite petitioner's failure to keep current the address specified as the one where mail would reach him, his duty to notify his board was nevertheless satisfied by his indicating in a questionnaire the address of an employer, not as his own mailing address, but merely as describing the location of his employer's business.

Petitioner cites no authority, and we have found none, to support his theory that furnishing an employer's address without more satisfies, as a matter of law, the address-notification requirement in a situation where an entirely different address is specified and stated positively to be the place where mail will be received.

It is clear, on the other hand, that the requirement that each registrant keep his local board currently informed of an address through which mail will reach him, was not intended to require less than full compliance. It was patently not intended to permit a registrant to avoid detection with impunity for the considerable period which is involved in

tracking him down through sources other than his own mailing address as indicated on his registration card of his Cover Sheet. Evidence of this is found in the circumstances which gave rise to the address-notification requirement.

At the time of World War I, very stringent regulations were promulgated defining each registrant's duty. The registrant, as he does today, filled out a registration card which called for the "permanent home address" of the registrant. P. M. G. O. Form No. 1, reproduced at p. 69, Forms Required to Be Used By the Selective Service Regulations of June 30, 1917, Nov. 8, 1917 and Sept. 16, 1918, War Department, Office of the Provost Marshal General. An instruction sheet (p. 62, *ibid.*) explained this item as follows:

> 2. Home address.
>
> This means the place where you have your permanent home, not the place where you work. * * *

The registrant was thereafter served with a questionnaire [24], which he was required to execute and return. Some of the procedure was very similar to that which obtains under the present regulations. Each notice was mailed to the registrant, and he was charged with compliance therewith at the peril of criminal prosecution for noncompliance.[25]

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[24] Form 1001B—P. M. G. O., pp. 180–196, *ibid.*

[25] Rule 6 of the General Rules and Regulations of the Selective Service (Vol. 2, Selective Service Rules, Regulations and Instructions, 1917–1919, War Department, Office of the Provost Marshal General) provided that all registrants were

Unlike the procedure today, however, the mailing of a notice and a registrant's receipt thereof, were irrelevent facts in a subsequent prosecution for noncompliance, because the regulations charged the registrant with constructive notice of each step in this procedure, and notice of each step was publicly announced through bulletins posted at the local boards. And he was not only charged with notice of each step—if he failed to supply information through which he could be located, he was automatically inducted, *in absentia,* and there-

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charged with knowledge of the regulations which had the force and effect of law. This rule also provided as follows:

"* * * Failure by any registrant, or by any person required to be registered, to perform any duty prescribed by the Selective Service Law or by these Rules and Regulations, whether or not the time of the performance of such duty is required by these Rules and Regulations to be posted or entered in the records of the Local or District Board, and whether or not formal notice is required by these Rules and Regulations to be given (such as registering and reporting change of status and other duties), is a misdemeanor, punishable by imprisonment for one year, and may result in loss of valuable rights and privileges and immediate induction into the military service; * * *."

Rule 6 was issued pursuant to Section 6 of the Act of May 18, 1917, 40 Stat. 76, 80–81, providing in pertinent part that:

"Any person charged with the duty of carrying into effect any of the provisions of this Act or the regulations made * * * thereunder who * * * in any manner, shall fail or neglect fully to perform any duty required of him in the execution of this Act, shall, if not subject to military law, be guilty of a misdemeanor, and upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than one year, or if subject to military law, shall be tried by a court-martial and suffer punishment as a court-martial may direct."

after, upon apprehension and a showing that his neglect was based on an intention to avoid military service, he was tried by a court-martial as an army deserter.[26] Cf. *United States ex rel. Bergdoll* v. *Drum,* 107 F. 2d 897 (C. A. 2), certiorari denied, 310 U. S. 648; *United States* v. *McIntyre,* 4 F. 2d 823 (C. A. 9); *United States ex rel. Feld* v. *Bullard,* 290 Fed. 704 (C. A. 2), certiorari denied, 262 U. S. 760; *United States ex rel. Helmecke* v. *Rice,* 281 Fed. 326 (S. D. Texas); *Ex parte Bergdoll,* 274 Fed. 458 (D. Kansas); *United States* v. *Block,* 262 Fed. 205 (D. Ind.).[27] Thus, the history of the address-notification requirement shows that self-invoked delays on the part of registrants were not contemplated; nor, in fact, were they tolerated.

At the time of the passage of the Selective Training and Service Act of 1940, 54 Stat. 885–897, it became necessary to establish machinery that would insure a prompt transferal of the national manpower to war activities. In *Falbo* v. *United States,* 320 U. S. 549, this Court said of this transition (pp. 551–552, 554):

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[26] See Sections 3 and 5, Mobilization Regulations of August 8, 1917, Vol. I, Selective Service Rules, Regulations and Instructions, 1917–1919, War Department, Office of the Provost Marshal General. See also pp. 5–6, section 7 of the General Rules and Regulations, contained in Vol. II of the same work.

[27] See the considerable body of case law involving this and related issues under the World War I Selective Service regulations collected at 129 A. L. R. 1171–1209.

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When the Selective Training and Service Act was passed in September, 1940, most of the world was at war. The preamble of the Act declared it "imperative to increase and train the personnel of the armed forces of the United States." The danger of attack by our present enemies, if not imminent, was real, as subsequent events have grimly demonstrated. The Congress was faced with the urgent necessity of integrating all the nation's people and forces for national defense. That dire consequences might flow from apathy and delay was well understood. Accordingly the Act was passed to mobilize national manpower with the speed which that necessity and understanding required.

* * * * *

* * * To meet the need which it felt for mobilizing national manpower in the shortest practicable period, Congress established a machinery which it deemed efficient for inducting great numbers of men into the armed forces. Careful provision was made for fair administration of the Act's policies within the framework of the selective service process. But Congress apparently regarded "a prompt and unhesitating obedience to orders" issued in that process "indispensable to the complete attainment of the object" of national defense. *Martin* v. *Mott,* 12 Wheat. 19, 30. * * *

Under the 1940 Act, the regulations were again drawn in the imperative language that the situation demanded, despite the fact that they contained a moderate degree of liberalization. The framers, perhaps with the *Bergdoll* cases in mind,[28] eliminated the provisions for automatic induction whereby a person who furnished his local board with no current address, might nevertheless be brought into the service *in absentia* and then tried by a court-martial as a deserter from the army on the theory that he had had constructive notice of each stage of the procedure.[29] But the regulations were never liberalized to the point of casting the burden of locating registrants on local boards. The ad-

[28] See *United States ex rel. Bergdoll* v. *Drum*, *supra*, 107 F. 2d 897; *Ex parte Bergdoll*, *supra*, 274 Fed. 458.

[29] While the instant punishment imposed on petitioner is three years' imprisonment (R. 5), it should be borne in mind that under World War I regulations he could have been automatically inducted when an attempt to locate him at his last address failed. Thereafter, if a proper showing of intent to avoid military duty were proved, he could have been tried by a court-martial as a deserter, subject to capital punishment if he should be found guilty of desertion during wartime (see Article of War 58, 10 U. S. C. 1530); cf. footnote 25, *supra*.

Examples of actual sentences imposed by courts-martial in World War I cases of that character are shown in the following cases: *United States ex rel. Helmecke* v. *Rice*, 281 Fed. 326 (S. D. Texas; dishonorable discharge and five years imprisonment); *Ex parte Bergdoll*, 274 Fed. 458 (D. Kansas; four years imprisonment); *United States ex rel. Young* v. *Lehman*, 265 Fed. 852 (D. C. Md.; five years imprisonment); *Ex parte Dunn*, 250 Fed. 871 (D. C. Mass.; 20 years imprisonment).

dress-notification requirement was explicitly framed so as to insure that each registrant would be promptly reached without the tedious and time-consuming task of corresponding with a number of possible sources of information in a trial and error attempt to reach him.

The Selective Service Act of 1948 was passed in an attempt to raise the strength of the armed forces to over two million from a figure considerably under that (H. Rep. 1881, 80th Cong. 2d sess., pp. 2–3). A total of 1,669,000 new men were needed for 1949 alone (S. Rep. 1268, 80th Cong., 2d sess., p. 4). Hence, speed was a major necessity and the regulations issued under the Act were couched in terms no less imperative than those issued under the 1940 Act.

To handle this immense undertaking in a period of continuing national emergency there were, in addition to compensated personnel, 50,000 volunteers who gave their professional services to the huge and difficult effort of quickly processing the large number of men for active duty in the armed forces (H. Rep. 1881, *supra,* p. 8). The local boards might be called upon to handle areas with as great a population as 100,000 persons (see 32 C. F. R. 1604.51). It is manifest that the problems of classifying, inspecting, selecting, and inducting a great heterogeneous group of men were many and varied. Each problem required contact with the registrant, either in person or by mail, and the clerical job was one of immense

proportions. In the circumstances, the address-notification requirement was essential under the 1948 Act in order to assure quick contact with the great number of persons involved. Consequently, as had been done under the 1940 Act, an unequivocal duty was placed on the registrant to keep his local board informed of an address through which he could be reached without delay. There is, therefore, no basis for the theory that the local board is required to expend its energies and time in a trial and error method of detecting recalcitrant or delinquent registrants. The burden of such a duty would, if placed on the local boards, thwart the Selective Service System at the critical period which gives rise to a need for extraordinary and speedy measures.

Finally, the framers of the 1948 Act and regulations were conscious of the fact that a considerable group of persons would attempt one way or another to avoid or delay as long as possible their induction into the armed services. This was borne out by past experience. In previous wars, delinquency had been a major problem. Under the 1940 Act, from October 16, 1940 to March 31, 1947, when the Act expired, the Department of Justice processed 377,207 cases of suspected delinquency. From the effective date of the Act to June 30, 1947, there were 16,907 convictions under the 1940 Act.[20] Under the 1948 Act, there were 2,892 cases handled by the Department of

[20] Annual Report of the Attorney General for 1947, p. 354.

Justice for the year 1949 alone.[31] When the delinquency figures are multiplied, the work load of the local boards is proportionately augmented. It follows that the address-notification requirement cannot be properly interpreted in a manner that will give a registrant a practically uncircumscribed opportunity to effect prolonged delays in the Selective Service procedure by partial or non-compliance with its urgent demands. Adoption of the theory advanced by petitioner would accomplish this result. It would permit a registrant to furnish various addresses to his local board, to change his mailing address at will without notifying the board or leaving forwarding directions, and then complacently wait until the board has exhausted every possible source that might disclose his whereabouts. Manifestly, to indulge such desultory or random compliance with the law by the registrant, would put a premium on planned non-cooperation, which in war or other great emergency would obviously be in derogation of the national welfare.

III

IT WAS NOT INCUMBENT ON THE LOCAL BOARD TO CONTINUE TO SEND MAIL TO ADDRESSES INDICATED BY PETITIONER, AFTER IT HAD ASCERTAINED THAT HE WAS NO LONGER AT ANY OF SUCH PLACES, AND AFTER IT HAD FURTHER ASCERTAINED THAT HE HAD FAILED TO FURNISH A CURRENT ADDRESS WHERE MAIL WOULD REACH HIM

Petitioner contends (Pet. Br. 17–18) that the evidence was insufficient because the local board

[31] Annual Report of the Attorney General for 1949, p. 348.

did not send mail to him during the period March 30 to May 31, 1951, *i. e.*, the period charged in the indictment. The contention is without merit.

By the beginning of the period set forth in the indictment, the board had learned that petitioner was no longer receiving mail at 72 West 107th Street, New York City, the address last indicated by him in his Questionnaire as his mailing address, and the address at which he had actually received his Notice of Classification (Ex. G–6). That fact was ascertained when two communications mailed to petitioner at that address by the board, were returned marked "Returned to sender. Removed. Left no address." The board had also, prior to the beginning of the period above-mentioned, made an effort to locate him at another address furnished by his mother, but without success.

It is patent, therefore, that it would have been of no avail to the board to continue to mail communications to petitioner during the period charged in the indictment at the mailing addresses furnished as such by him and his mother, after it had learned by mailing tests that he had abandoned such addresses, and had furnished no other current mailing address.

If petitioner means by this contention that the government did not prove that he failed to furnish his board with an address where mail would reach him during the period mentioned, he is merely rearguing the factual issue which was resolved by the jury against him under proper instructions. He makes no assertion that he did

furnish such an address during the period and points to no evidence showing that he did so. In fact, he admitted on the witness stand that he had failed to keep the board informed of his current mailing address (R. 26–29). The papers from his file (including the Cover Sheet thereof which is intended to reflect at all times the registrant's correct mailing address) which were admitted in evidence indicate that he persisted in his failure to notify the board of a current mailing address during the period named in the indictment, just as he had done on previous occasions. The board had no address on any paper submitted by petitioner, purporting to be his *own* address, which the evidence does not show was insufficient to reach him by mail during the pertinent period. This attack, which appears to be directed merely to the weight of the evidence, has been rejected by both courts below, and is without force.

CONCLUSION

It is respectfully submitted, therefore, that for the reasons stated above, the judgment of the court below should be affirmed.

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Solicitor General.
CHARLES B. MURRAY,
Assistant Attorney General.
JOHN R. BENNEY,
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DECEMBER 1952.

APPENDIX A

STATUTES AND REGULATIONS INVOLVED

Section 12 (a), Selective Service Act of 1948, 62 Stat. 622 (50 U. S. C. App. 462 (a)):

> Any * * * person * * * who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Section 15 (b), Selective Service Act of 1948, 62 Stat. 624 (50 U. S. C. App. 465 (b)):

> It shall be the duty of every registrant to keep his local board informed as to his current address and changes in status as required by such rules and regulations as may be prescribed by the President.

The pertinent provisions of the regulations, Title 32, C. F. R. (1949 Ed.), follow:

Section 1602.4:

Delinquent. A "delinquent" is a person required to be registered under the selective service law who fails or neglects to perform

any duty required of him under the provisions of the selective service law.

Section 1606.51:

Forms made part of regulations. (a) All forms and revisions thereof referred to in these or any new or additional regulations, this chapter or any new or additional regulations, or in any amendment to this chapter or such new or additional regulations, and all forms and revisions thereof prescribed by the Director of Selective Service shall be and become a part of this chapter in the same manner as if each form, each provision therein, and each revision thereof were set forth herein in full. Whenever in any form or in the instructions printed thereon, any person shall be instructed or required to perform any act in connection therewith, such person is hereby charged with the duty of promptly and completely complying with such instruction or requirement.

Section 1611.6:

Responsibility for performance of duty. (a) Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

(c) Every person who, on the day or one of the days fixed for registration, is required to be registered is personally charged with the duty of presenting himself before the proper officials and submitting to registration.

(d) The duty of every person subject to registration to present himself for and submit to registration shall continue at all times, and if for any reason any such per-

son is not registered on the day or one of the days fixed for his registration, he shall immediately present himself for and submit to registration before the local board in the area where he happens to be.

Section 1613.11:

Interview of the registrant. All persons who present themselves for registration shall be registered on a Registration Card (SSS Form No. 1). All entries on the Registration Card (SSS Form No. 1) must be made by the registrar and shall be in ink, clear and legible. The registrar shall not permit anyone other than himself to write on the Registration Card (SSS Form No. 1) except when the registrant signs the completed card.

* * * * *

(c) The registrar shall ask the registrant for the information necessary to complete the entries on lines 1 to 15, inclusive, of the Registration Card (SSS Form No. 1), and shall enter such information on the proper lines of the card. The registrar shall make certain that the registrant fully understands what information is required and if any information given by the registrant is not clear the registrar shall carefully explain to the registrant what information is required and request that it be furnished clearly and correctly.

* * * * *

Section 1613.12:

Instructions concerning completion of registration card. (a) The registrar shall take extreme care that the place of resi-

dence of the registrant is correctly entered on line 2 of the Registration Card (SSS Form No. 1). The registrar shall inform the registrant that the local board which has jurisdiction over the place he gives as his residence will always have jurisdiction over him. The registrar shall require the registrant to give sufficient information as to the location of the place of his residence to establish such place within the jurisdiction of a local board. The registrant shall not be permitted to give a place of residence outside of the several States of the United States, the District of Columbia, the Territory of Alaska, the Territory of Hawaii, Puerto Rico, or the Virgin Islands. In describing his place of residence, the registrant shall give the street number thereof, when used, and in every case he shall give the name of the town, township, village, or city, and the county and State in which it is located. No R. F. D. route number shall be sufficient unless it is supplemented by more particular information showing where the place of residence is located on the R. F. D. route. The registrant shall be permitted to determine what place he desires to give as his residence when he is not located in the same place all of the time.

(b) The registrar shall make sure that the correct mailing address of the registrant is entered on line 3 of the Registration Card (SSS Form No. 1). The mailing address shall be entered in full on line 3 of the card even if it is the same as the place of residence entered on line 2. It should be made clear to the registrant that he should give as his mailing address an address normally regarded by him as a permanent address at

which he would expect to receive important communications. The registrar shall advise the registrant that a correct mailing address is most important because it is the address to which all notices to the registrant will be sent, and that he must advise his local board each time there is a change in his mailing address.

Section 1632.1:

Order to report for induction. Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (SSS Form No. 252) in duplicate. The date specified for reporting for induction shall be at least 10 days after the date on which the Order to Report for Induction (SSS Form No. 252) is mailed. The local board shall mail the original of the Order to Report for Induction (SSS Form No. 252) to the registrant and shall file the copy in his Cover Sheet (SSS Form No. 101).

Section 1641.2:

Failure to take notice. (a) If a registrant or a person required to present himself for and submit to registration fails to perform any duty prescribed by the selective service law, or directions given pursuant thereto, within the required time, he shall be liable to fine and imprisonment under section 12 of title I of the Selective Service Act of 1948.

Section 1641.3:

Communication by mail. It shall be the duty of each registrant to keep his local board advised at all times of the address where mail will reach him. The mailing of any order, notice, or blank form by the

local board to a registrant at the address last reported by him to the local board shall constitute notice to him of the contents of the communication, whether he actually receives it or not.

Section 1641.5:

Classification Record (SSS Form No. 102). The Classification Record (SSS Form No. 102) shall be open to the public at the local board office. It shall be the duty of each registrant to keep himself informed of his status, and any entry concerning him on the Classification Record (SSS Form No. 102) shall constitute due legal notice thereof to him and to all other interested persons.

Section 1641.6:

Computation of time. The period of days allowed a registrant or other person to perform any act or duty required of him shall be counted as beginning on the day following that on which the notice to him is posted or mailed.

Section 1642.2:

Continuing duty. When it becomes the duty of a registrant or other person to perform an act or furnish information to a local board or other office or agency of the Selective Service System, the duty or obligation shall be a continuing duty or obligation from day to day and the failure to properly perform the act or the supplying of incorrect or false information shall in no way operate as a waiver of that continuing duty.

Section 1642.3:

Compliance with procedures of this part not condition precedent to prosecution. Compliance by a local board or any other

agency of the Selective Service System with any or all of the procedures prescribed by this part is not a condition precedent to the prosecution of any person under the provisions of section 12 of the Selective Service Act of 1948.

Section 1642.41:

Report of delinquent to United States Attorney. (a) Every registrant who fails to comply with an Order to Report for Induction (SSS Form No. 252) or an Order for Transferred Man to Report for Induction (SSS Form No. 253) shall be reported promptly to the United States Attorney on Delinquent Registrant Report (SSS Form No. 301): *Provided,* That, if the local board believes by reasonable effort it may be able to locate the registrant and secure his compliance, it may delay the mailing of such Delinquent Registrant Report (SSS Form No. 301) for a period not in excess of 30 days. A copy of such Delinquent Registrant Report (SSS Form No. 301) shall be placed in the delinquent's Cover Sheet (SSS Form No. 101).

(b) In endeavoring to locate and to secure the compliance of a delinquent prior to reporting him to the United States Attorney, the local board should contact the delinquent and the "employer" or "person who will always know" the delinquent's address, as shown on the Registration Card (SSS Form No. 1), or any other person likely to know his whereabouts. The local board may enlist the aid of local and State police officials or any other public or private agencies it deems advisable. In no event shall the local board order or participate in the arrest of a delinquent.

APPENDIX B

SELECTIVE SERVICE FORMS INVOLVED

Form approved
Budget Bureau No. 33-R003.5.

SELECTIVE SERVICE SYSTEM

CLASSIFICATION QUESTIONNAIRE

Selective Service No. ☐☐☐☐ Date of mailing .....
Date received back at local board .....

Date of birth: Name:

(Month) (Day) (Year) (Last) (First) (Middle)

Address: .....
(Number and street or R. F. D. route)

.....
(City, town, or village) (County) (State)

(Local Board Stamp)

NOTICE TO REGISTRANT

You are required by the Selective Service Regulations to fill out this questionnaire truthfully and to return it to this local board on or before the date shown below. Wilful failure to do so is punishable by fine and imprisonment.

THIS QUESTIONNAIRE MUST BE RETURNED ON OR BEFORE .....

.....
Clerk or Member of Local Board.

(The above items are to be filled in by the local board before the questionnaire is mailed to the registrant.)

INSTRUCTIONS

This questionnaire is intended to furnish the local board with information to enable it to classify you. You will receive notice from your local board of your classification.

The registrant is required to sign the certificate on page 7. If another person assists the registrant in completing this questionnaire, the person assisting is required to complete the statement following the registrant's certificate. Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making, or being a party to the making, of any false statement or certificate regarding or bearing upon a classification.

If the registrant is an inmate of an institution and is unable to complete the questionnaire, the executive head of the institution shall communicate these facts immediately to the local board.

1. Make no alterations in the printed matter in this questionnaire.

2. All spaces in this questionnaire that apply to registrants must be completed with the appropriate words or check marks.

3. If you furnish additional information or affidavits with your questionnaire, attach the same securely to it.

4. If you are now on active duty with the Armed Forces, obtain a certificate to that effect from your commanding officer. Execute only Series I and II of the questionnaire and return it, with certificate attached, to your local board.

5. After this questionnaire has been returned, report to your local board at once any change of address, any change in place of employment or occupation, or any other new fact which may affect your classification.

SSS Form No. 100 (Revised 7-27-53) (1)

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Statements in this questionnaire are confidential as prescribed in the Regulations

USE INK OR TYPEWRITER IN FILLING OUT THIS FORM

STATEMENTS OF THE REGISTRANT

Series I.—IDENTIFICATION

INSTRUCTIONS.—Every registrant shall complete all statements in this series.

1. My name is (print) _____ (Last) (First) (Middle)

2. In addition to the name given above, I have also been known by the name or names of _____ (If none, write "None")

3. My address now is 1210 B 28th St (Number and street or R. F. D. route)

_____ (City, town, or village) (County) (State)

4. My telephone number now is _____ (Town) (Exchange) (Number) (If you have no phone, write "None.")

5. My Social Security number is _____ (If none, write "None")

Series II.—PRESENT MEMBERS OF ARMED FORCES

INSTRUCTIONS.—Every registrant who is a member of one or more of the groups named in this series shall supply the information called for under the appropriate item or items.

1. (a) I am at present on ACTIVE DUTY in the Armed Forces, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service as a _____ (Grade, rank, or rating) in the _____ (Branch of Armed Forces)

(b) Service or serial number _____ (c) I entered on active duty _____ (Date)

(d) My present tour of active duty will terminate _____ (Date)

2. (a) I am at present a member of a reserve component of the Armed Forces, NOT ON ACTIVE DUTY as a _____ (Grade, rank, or rating) in the _____ (Branch of Armed Forces)

(b) I entered into such component on _____ (Date)

(c) I _____ (am, am not) performing service in such component by satisfactorily participating in scheduled drills and training periods as prescribed by the Secretary of Defense.

3. (a) I am at present (check appropriate box) enrolled in the advanced course, senior division, Reserve Officers' Training Corps ☐; or the Air Reserve Officers' Training Corps ☐; a member of the Naval Reserve Officers' Training Corps entered upon the junior or senior year ☐; a midshipman, United States Naval Reserve ☐; in the _____ (College or university)

(b) I acquired such status on _____ (Date)

4. (a) I am selected for enrollment or continuance in the senior division, Reserve Officers' Training Corps ☐; the Air Reserve Officers' Training Corps ☐; the Naval Reserve Officers' Training Corps ☐; I am appointed a midshipman, United States Naval Reserve ☐; and I have agreed in writing to accept a commission if tendered and to serve, subject to call by the Secretary of the Army, the Secretary of the Air Force, or the Secretary of the Navy, not less than 2 years on active duty after receipt of a commission.

(b) I was selected on _____ (Date) (c) The above agreement was signed _____ (Date)

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5. I am a fully qualified and accepted aviation cadet applicant of the (check appropriate box) Army ☐; Navy ☐; Air Force ☐; and have signed an agreement of service for a period commencing on _____ (Date) and ending _____ (Date)

Series III.—PRIOR MILITARY SERVICE

INSTRUCTIONS.—Every registrant who has been on active duty as a member of the Armed Forces of the United States, the Coast Guard, the Public Health Service on active duty with the Armed Forces or the Coast Guard, or the armed forces of an allied country, shall complete the statements in this series. (Use a separate line for each term of service, listing last service first. If none, write "None.")

1. Branch of Armed Forces	Date of Entry Into Active Service (Month, Day, Year)	Service or Serial Number	Date of Separation From Active Service (Month, Day, Year)	Type of Discharge (Honorable, Dishonorable, Bad Conduct, Undesirable, or other—Specify)
(Last service)				

2. Does service shown in Item 1 above include any time spent in attending any of the specialized or college training programs under the jurisdiction of the Army, Navy, Marine Corps, or Coast Guard; or as a cadet or midshipman in one of the armed service academies? Yes ☐; No ☐.

3. If your answer to Question 2 is "Yes," give the name of the program _____ date of entry _____ (Month) (Day) (Year) and date of release _____ (Month) (Day) (Year) from such specialized training or academy.

Series IV.—OFFICIALS DEFERRED BY LAW

1. I am at present the Governor of a State, Territory, or Possession; a public official chosen by the votes of an entire State, Territory, or Possession; a member of the legislative body of the United States or of a State, Territory, or Possession; a judge of a court of record of the United States or of a State, Territory, or Possession or the District of Columbia; my office is _____ (If none, write "None")

2. My term of office expires _____ (Date)

Series V.—SOLE SURVIVING SON

I _____ (am, am not) the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

Series VI.—MINISTER, OR STUDENT PREPARING FOR THE MINISTRY

INSTRUCTIONS.—Every registrant who is a minister or a student preparing for the ministry shall complete the statements in this series that apply to him.

1. (a) I _____ (am, am not) a minister of religion. (b) I _____ (do, do not) regularly serve as a minister.

(c) I have been a minister of the _____ (Name of sect or denomination) since _____ (Month) (Day) (Year)

(d) I _____ (have, have not) been formally ordained. (e) If so, my ordination was performed on _____ (Month) (Day) (Year) by _____ (Ecclesiastical official performing the ordination) at _____ (City and State)

2. (a) I _____ (am, am not) a student preparing for the ministry under the direction of _____ (Name of church or religious organization) in a theological or divinity school.

(b) I am attending the _____ (Name of theological or divinity school) located at _____

3. I _____ (am, am not) a student preparing for the ministry under the direction of _____ (Name of church or religious organization) pursuing a full time course of instruction leading to my entrance into _____ (Name of theological or divinity school) located at _____, in which I have been pre-enrolled.

Series VII.—FAMILY STATUS AND DEPENDENTS

INSTRUCTIONS.—Every registrant shall complete this series.

1. (a) I have never been married ☐; I am a widower ☐; I am divorced ☐; I am married ☐. (b) I _____ (Use "do not")
(Check appropriate box)
live with my wife; if not, her address is _____

(c) We were married at _____ (Place) on _____ (Date)

2. (a) I have _____ (Number) children under 18 years of age. (If none, write "None")

(b) Of these children, _____ (Number) live with me in my home.

3. I have _____ (Number) persons other than those shown above, wholly or partially dependent upon me for support.

NOTE.—Every registrant should submit to the local board on a separate sheet attached to this questionnaire any additional information concerning his status with respect to persons dependent upon him for support which he believes should be considered by the local board.

Series VIII.—PRESENT OCCUPATION

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated.

(a) I am now working on a farm, orchard, or ranch. ☐ { If this box is checked, complete Series IX.

(b) I am now working in a nonagricultural occupation. ☐ { If this box is checked, complete this series.

(c) I am now a full-time student. ☐ { If this box is checked, complete Series XI.

(d) I now have no employment nor am I a full-time student. ☐ { If this box is checked, complete Parts 7 and 8 of this series.

2. The job I am now working at is (give full title, for example: Construction draftsman, turret-lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.):

_____

3. I do the following kind of work in my present job (Be specific. Give a brief statement of your duties.):

_____

4. In my present job, I am (Check one box only)—
(a) A regular or permanent employee, working for salary, wages, commission, or other compensation ☐;

I have worked _____ (Use "do not") years in my present trade, and I _____ expect to continue indefinitely in it.

(b) A temporary or occasional employee ☐; I expect that my present job will end about _____ (Date)

(c) An apprentice under a written or oral agreement with my employer, which expires _____ (Date) ☐

(d) An independent worker, working on my own account, not hired by anyone, and not hiring any help ☐;

(e) Working for my father or for the head of my family, but receiving no pay ☐

(f) An employer or proprietor hiring _____ (Number) paid workers ☐.

5. My employer is Hollerbach (Inc.)
(Name of organization or employer, not foreman or supervisor; write "Self" if self-employed)
799 Bethany Hgts
(Address or place of employment; Street, or R. F. D. number, City, and State)
whose business is Dr Foundry
(Nature of business; write "Unknown" if you do not know)

6. (a) I was employed by present employer on _____ (Date)

(b) I entered job described in Statements 2 and 3, this series, on _____ (Date)

Series XIV.—CONSCIENTIOUS OBJECTION TO WAR

INSTRUCTIONS.—Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form shall sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board.

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

.....
(Signature)

Series XV.—PHYSICAL CONDITION

INSTRUCTIONS.—Every registrant shall complete this series. Any registrant who answers any of the questions listed below by "Yes" and who believes himself physically disqualified for service in the Armed Forces may attach an affidavit from his physician, hospital, or sanatorium to support his claim.

1. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? Yes ☐; No ☐.
2. If the answer to Question 1 is "Yes," state the condition from which you are suffering .....
3. Are you now, or have you ever been, an inmate or a patient in a mental hospital or institution? Yes ☐; No ☐.
4. Are you now, or have you ever been, an inmate or a patient in a tuberculosis hospital or sanatorium? Yes ☐; No ☐.
5. If the answer to Question 3 or Question 4 is "Yes," give the name and address of each hospital, institution, or sanatorium .....
6. Have you had treatment from a physician for any condition within the last 5 years? Yes ☐; No ☐.
7. If the answer to Question 6 is "Yes," state each condition from which you suffered and give the name and address of the physician who attended you, and dates of each treatment .....

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS.—It is optional with registrant whether or not he completes this statement, and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine the classification of the registrant on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in this questionnaire it is my opinion that my classification should be Class .....

The registrant may write in the space below or attach to this page any additional statement which he believes should be brought to the attention of the local board in determining his classification.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant shall make the registrant's certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Act of 1948 as amended.)

I, ..., certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing ..... (are, are not) in my own handwriting.

Registrant sign here ☞ .....
(Signature or mark of registrant)

.....
(Signature of witness to mark of registrant)

Date .....

.....
(Signature of witness to mark of registrant)

If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because .....

.....
(For example—registrant unable to read and write English, etc.)

.....
(Signature of person who has assisted)

(Registrants Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board	Vote	
		Yes	No

Sept 16/48

SSS Form No. 1
(Form approved.
Budget Bur. No. 33-R090)

SELECTIVE SERVICE SYSTEM
REGISTRATION CARD

SELECTIVE SERVICE NUMBER

[Registrar will not enter Selective Service number]

1. Name

(Last) (First) (Middle)

2. Place of residence

(City, town, village, or county) (State)

[The place of residence given on the line above will determine Local Board jurisdiction]

3. Mailing address

4. Name and address of person who will always know your address

(Name) (Address)

5. Date of birth

(Month) (Day) (Year)

6. Place of birth

(City, town, village, or county) (State or country)

7. Occupation

8. Firm or individual by whom employed

9. Nature of business, service rendered, or chief product

10. Place of employment or business

(Number and street or R. F. D. number) (Town) (County) (State)

11. Local board with which registered under Selective Training and Service Act of 1940, as amended

12. Were you ever rejected for service in the armed forces? Yes ☐ No ☐ When?

13. Marital status: Single ☐ Married ☐ [Living with wife ☐ Separated ☐ Divorced ☐ Widower ☐] Father ☐

(Over)

16—48561-1

14. Active duty in the armed forces of the United States or a cobelligerent nation since Sept. 16, 1940:

.....
(Branch of Armed Forces) (Service or serial number) (Date of entry)

.....
(Name of last organization) (Date of separation)

15. Present membership in a reserve component of the armed forces:

.....
(Branch of Armed Forces) (Service or serial number) (Date of entry)

.....
(Grade and organization)

I affirm that I have verified the foregoing answers and that they are true:

.....
(Signature of registrant)

DESCRIPTION OF REGISTRANT

16. Color of eyes ..... Color of hair ..... Complexion .....

Height (approx.) ..... ft. ..... in. Weight (approx.) ..... Race .....

Other obvious physical characteristics that will aid in identification:

.....

I certify that my answers are true; that the person registered has read or has had read to him his own answers; that I have witnessed his signature or mark and that all of his answers of which I have knowledge are true, except as follows:

.....

....
(Date of registration) (Signature of registrar)

Registrar for local board .....
(Number) (City or county) (State)

(Stamp of the Local Board of jurisdiction as determined by item 2, front of card)

U. S. GOVERNMENT PRINTING OFFICE 16—55561-1

NOTICE OF RIGHT TO APPEAL

Appeal from classification by local board must be made within 10 days after the mailing of this notice by filing a written notice of appeal with the local board.

Within the same 10-day period you may file a written request for personal appearance before the local board. If this is done, the time in which you may appeal is extended to 10 days from the date of mailing of a new Notice of Classification after such personal appearance.

If an appeal has been taken and you are classified by the appeal board in either Class I-A or Class I-A-O and one or more members of the appeal board dissented from such classification you may file a written notice of appeal to the President with your local board within 10 days after the mailing of this notice.

Cut along this line

Cut along this line to detach card

SELECTIVE SERVICE SYSTEM
NOTICE OF CLASSIFICATION

Approval of Budget Bureau not required

.....
(Last name) (First name) (Middle name)

Selective Service No. [ ] [ ] [ ] [ ] has been classified in Class ..... (Until .....,
19.....) by ☐ Local Board. ☐ Appeal Board,
by vote of ..... to ..... ☐ President
(Show vote on appeal board cases only)

....., 19..... .....
(Date of mailing) (Member of local board)

The law requires you, subject to heavy penalty for violation, to carry this notice, in addition to your Registration Certificate, on your person at all times—to exhibit it upon request to authorized officials—to surrender it, upon entering the armed forces, to your commanding officer.

For advice, see your Government appeal agent.

The law requires you: (1) To keep in touch with your local board; (2) to notify it of any change of address; (3) to notify it of any fact which might change your classification; (4) to comply with the instructions on the notice of classification part of this form.

SSS Form No. 110 (Revised 4-15-49)

Cut along this line to detach card

(Registrant must fill here)

16—81824-7 U. S. GOVERNMENT PRINTING OFFICE

Selective Service System

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300 (GPO)

(LOCAL BOARD STAMP)

OFFICIAL BUSINESS

16—81284-6

73

SELECTIVE SERVICE SYSTEM

REGISTRATION CERTIFICATE

This is to certify that in accordance with the Selective Service Proclamation of the President of the United States

....
(First name) (Middle name) (Last name)

.....
(Place of residence—Identical with Item 9 of Registration Card)

....
(Date of birth) (Place of birth)

has been duly registered this .... day of ....., 19....

.....
(Signature of registrar)

Registrar for Local Board ....
(Number) (City or county) (State)

The law requires you to have this card in your possession at all times for identification and to advise your Local Board of change of address

SSS Form No. 2 Form approved. Budget Bureau No. 33-R100. 16—55461-1

(Registrant must sign here)

DESCRIPTION OF REGISTRANT

Color of eyes ..... Color of hair .....

Complexion ..... Height (Approx.) .....ft. .....in.

Weight (Approx.) ..... Race .....

Other obvious physical characteristics that will aid in identification

.....

.....

.....

....

GPO 16—55461-1

U. S. GOVERNMENT PRINTING OFFICE: 1955

No. 390. WARD *v.* UNITED STATES. Certiorari, 344 U. S. 814, to the United States Court of Appeals for the Fifth Circuit. Argued January 13, 1953. Decided February 2, 1953. *Per Curiam:* The indictment in this case charged that between the dates of March 30, 1951, and May 31, 1951, petitioner "knowingly" failed to furnish his local Selective Service Board with a correct address where mail might be delivered to him. 50 U. S. C. App. §§ 462 (a), 465 (b); 32 CFR § 1641.3. The record does not support the charge that, during this period, there was deliberate purpose on the part of petitioner not to comply with the Selective Service Act or the regulation issued thereunder. Accordingly, the decision below is reversed. *John M. Coe* and *Ralph E. Powe* argued the cause for petitioner. With them on the brief was *James T. Wright*. *John R. Benney* argued the cause for the United States. With him on the brief were *Solicitor General Cummings, Assistant Attorney General Murray, Beatrice Rosenberg* and *Carl H. Imlay*. Reported below: 195 F. 2d 441.